

Public Hearing Questions for
Advisory Council on Workers' Compensation
Created by Section 50-6-121, *Tennessee Code Annotated*
(Sunset termination June 30, 2012)

1. Provide a brief introduction to the council, including information about its purpose, statutory duties, staff, and administrative attachment.

The Advisory Council on Workers' Compensation, created pursuant to TCA § 50-6-121, provides information, research and recommendations concerning workers' compensation issues to the Governor, the Tennessee General Assembly, the Department of Commerce and Insurance (DC&I) and the Department of Labor and Workforce Development (DLWFD).

In general, the Advisory Council is authorized to monitor the performance of the workers' compensation system in the implementation of legislative directives, to make recommendations relating to the adoption of rules and legislation, and to make recommendations regarding the method and form of statistical collections. The Advisory Council also reviews the annual advisory prospective loss cost filing by the National Council on Compensation Insurance (NCCI) and provides comment and recommendation concerning the filing to the Commissioner of Commerce and Insurance. In addition, at the request of the General Assembly, the Advisory Council annually reviews and provides comments and recommendations on proposed workers' compensation legislation.

The Advisory Council on Workers' Compensation was initially created by the General Assembly in 1992. The Workers' Compensation Reform Act of 1996 terminated the existing Advisory Council and created a new Advisory Council on Workers' Compensation. The current Advisory Council is comprised of the State Treasurer who serves as Chair, three (3) voting members who represent employees; three (3) voting members who represent employers; ten (10) nonvoting members and four (4) ex officio members. The Chair may vote only on matters related to the administration of the Advisory Council or the Council's research; the chair is not permitted to vote on any matter which constitutes the making of a policy recommendation to the Governor or to the General Assembly.

In addition, the Advisory Council may:

- monitor the performance of the workers' compensation system in the implementation of legislative directives.
- develop evaluations, statistical reports and other information from which the General Assembly may evaluate the impact of the legislative changes to

workers' compensation law, including, but not limited to, the Reform Act of 2004 and subsequent statutory changes to the Workers' Compensation Law.

- issue an annual report that includes a summary of significant Supreme Court decisions relating to workers' compensation, including an explanation of their impact on existing policy.
- study and report on the occupational health and safety of employment in Tennessee and make recommendations for safe employment education and training and promote the development of employer-sponsored health and safety programs.

Pursuant to T.C.A. § 50-60-121(g), the Advisory Council is attached to the Department of Treasury for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit and other related items. The State Treasurer has administrative and supervisory control over the staff assigned to assist the Council. The State Treasurer, who also serves as Chair, may vote only on matters related to the administration of the Council or its research; the Chair is not permitted to vote on any matter which constitutes the making of a policy recommendation to the Governor or to the General Assembly. A workers' compensation administrator is assigned to carry out the duties and responsibilities of the program.

Treasury Staff

David H. Lillard, Jr.	Treasurer
Lynn Ivanick	Workers' Compensation Administrator
Janice Cunningham	Chief of Staff
Steve Curry	Assistant Treasurer, Program Services
Mary Roberts-Krause	General Counsel
Anne Adams	Director of Claims Administration

2. Provide a list of current council members and describe how membership complies with Section 50-6-121, *Tennessee Code Annotated*. Who appoints members? Are there any vacant positions on the council? If so, what steps have been taken to fill the vacancies?

<u>Voting Members:</u>	<u>Term of Appointment</u>	<u>Appointed by:</u>
David H. Lillard, Jr., Chair.*	Ex-Officio	
J. Anthony Farmer	July 1, 2010 - June 30, 2014	Senate Speaker
Jack A. Gatlin	July 1, 2010 - June 30, 2014	House Speaker
Jerry Lee	July 1, 2008 - June 30, 2012	Governor
Bob Pitts	July 1, 2010 - June 30, 2014	Governor
Dan Pohlgeers	Dec. 29, 2010 - June 30, 2012	House Speaker
Gary Selvy	June 21, 2008 - June 30, 2012	Senate Speaker
<u>Non Voting Members</u>	<u>Term of Appointment</u>	<u>Appointed by</u>
Paula M. Claytore	July 1, 2011 - June 30, 2015	Governor
David Davenport	Oct. 1, 2009 - June 30, 2013	Governor
Bruce D. Fox	July 1, 2011 - June 30, 2015	Governor
Keith B. Graves	July 1, 2009 - June 30, 2013	Governor
Lynn Vo Lawyer	July 1, 2011 - June 30, 2015	Governor
Kenny McBride	July 1, 2009 - June 30, 2013	Governor
Jerry Mayo	July 1, 2009 - June 30, 2011	Governor
Sam Murrell	July 1, 2010 - June 30, 2013	Governor
Gregory Ramos	July 1, 2009 - June 30, 2013	Governor
Occupational Therapist (vacant)	Sept. 29, 2009-June 30, 2013	Governor

* The Chair votes only on matters related to the administration of the Council or its research.

Sen. Jack Johnson, Chair Senate Commerce, Labor and Agriculture	Ex-Officio
Rep. Jimmy Eldridge, Chair House Consumer and Employee Affairs	Ex-Officio
DLWFD Commissioner Karla Davis Abbie Hudgens, Designee	Ex-Officio
C&I Commissioner Julie Mix-McPeak Mike Shinnick, Designee	Ex-Officio

The State Treasurer has administrative and supervisory control over the staff assigned to assist the Council. The Chair may vote only on matters related to the administration of the Council or its research; the Chair is not permitted to vote on any matter which constitutes the making of a policy recommendation to the Governor or to the General Assembly.

The above membership complies with T.C.A. § 50-6-121. The term for the insurance industry representative has expired, but the member continues to serve in that capacity until an appointment is made. The occupational therapist position is vacant. The Governor will make these appointments.

3. Does the council's membership include public/citizen members? Female members? Members of a racial minority? Members who are 60 years of age or older?

The Council's membership includes fifteen (15) public/citizen members, four (4) female members, three (3) members of a racial minority and multiple members who are sixty (60) years of age or older.

4. What per diem or travel reimbursement do members receive? How much was paid to council members during fiscal years 2010 and 2011?

Members of the Advisory Council serve without compensation, but shall receive reasonable reimbursement for actual and necessary travel expenses in accordance with the travel regulations promulgated by the Department of Finance and Administration.

Treasury does not have access at this time to the payments made by the Dept. of Labor and Workforce Development in fiscal year 2010.

For fiscal year ending June 30, 2011, the Treasury Department paid \$4,605.99 for travel expenses for Council members.

5. How many times did the council meet in fiscal years 2010 and 2011? How many members were present at each meeting?

The council met four (4) times in FY2010 and six (6) times in FY2011.

Fiscal Year	Meeting Date	Members Present		
		Voting	Non-Voting	Total
FY2010	Aug. 27	6	4	10
	Oct. 8	5	7	12
	Feb. 8	6	9	14
	March 5	5	10	15
FY2011	Aug. 17	5	8	13
	Oct. 5	5	8	13
	Feb. 28	7	8	15
	March 24	7	8	15
	April 8	7	7	14
	April 25	7	7	14

6. Is the council subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the council have for informing the public of its meetings and making its minutes available to the public?

The Advisory Council is subject to Sunshine law requirements for public notice of meetings, prompt and full recording of minutes, and public access to minutes. Public notices are posted at the Legislative Plaza and other state buildings, and are posted on the Treasury Department's website. We have solicited interested persons to supply us with their email addresses. As a result, we have a list of several hundred individuals of the general public as well as lobbyists for whom we provide meeting information, such as meeting dates, agendas and issues to be reviewed, for their review prior to our publicly held meetings.

Beginning July 1, 2010, all Council meetings are held in Legislative Plaza and are videostreamed on the General Assembly's website which provides live public access as well as archiving for post-meeting review. Member information, agendas, minutes, presentations and other relevant documents are posted on the Treasury Department's website.

7. What were the council's revenues (by source) and expenditures (by object) for fiscal years 2010 and 2011?

The Council derives its funding from the annual State Appropriation.

Treasury does not have access at this time to the expenditures for fiscal year 2010 when the Council was attached to the Department of Labor and Workforce Development.

<u>FY 2011 Expenditures</u>	<u>Amount</u>
Payroll and benefits	\$48,627.72
Travel	\$4,605.99
Printing, communications, shipping	\$46.89
Third party professionals	\$13,724.75
Supplies and office furniture	\$613.23
Rental and Insurance	\$119.52
Training of State Employees	\$150.00
Computer related items	\$1,319.04
Professional services provided by other state agencies	<u>\$1,633.55</u>
Fiscal Year 2011 Total	\$70,840.25

- 8. Has the council set goals and measured its performance compared to the goals? What performance indicators (or goals) does management use to measure the effectiveness and efficiency of the council? How well has the council performed, based on those performance indicators?**

The Advisory Council, which serves in an advisory capacity, strives to meet all statutory responsibilities and reporting requirements. It makes recommendations on legislation. It reviews and makes recommendations on the NCCI experience and law only filings. It monitors the performance of the workers' compensation system relative to implementation of legislative directives. The Council prepares an annual report of its activities. The Council provides required reporting in a timely manner.

- 9. Please describe any reports prepared by the council, during fiscal years 2010 and 2011, and specify to whom the reports are sent, including required reports (Section 50-6-121(e), (i), (j) and (l), *Tennessee Code Annotated*) and authorized reports (Section 50-6-121(h), *Tennessee Code Annotated*). Please attach copies of the reports.**

Pursuant to T.C.A. § 50-6-121(e), the Council prepared an annual report of its findings and conclusions for fiscal year ending June 30, 2011. A copy of the report is attached. Also attached are copies of the annual report of significant Supreme Court decisions relating to workers' compensation, as required by T.C.A. §50-6-121(i), and meeting summary reports required by T.C.A. §50-6-121(j).

Separate reports are submitted for each bill reviewed by the Council. The reports include the Council recommendations and are timely submitted to the Senate and House Committee Chairs. The reports are too voluminous to attach to this

document; therefore, a sample of such a report from this session is attached for your review. It includes the status of the law as it presently exists, the practical effect the bill will have if passed, the fiscal note attached to the bill and the Council's recommendation along with individual comment regarding that recommendation presented during Council's session.

Through contracting with actuarial and statistical vendors, additional reports are generated for use by the Council and General Assembly annually. These include the actuarial review of NCCI's annual experience filing, actuarial reviews of any NCCI law-only filings, an annual analysis by the Council's statistician of data from the Department of Labor and Workforce Development, an annual report of the Assigned Risk Plan Data from its administrator and, at the request of the chair, an annual Overview of the Tennessee Workers' Compensation Market Conditions and Environment from the DC&I. These reports are disseminated to Council Members, Committee Chairs of Senate Commerce, Labor & Agriculture and House Consumer & Employee Affairs, as well as interested parties on our email list in advance of the meetings in which they are to be discussed and are attached for your review. These reports are located on the Treasury Department's website as well.

10. How many bills were reviewed at the request of the standing committees of the General Assembly as authorized at Section 50-6-121(k), *Tennessee Code Annotated*, during fiscal years 2010 and 2011?

In fiscal year 2010, the Council reviewed seventeen (17) bills.

In fiscal year 2011, the Council reviewed nineteen (19) bills.

11. What were the major accomplishments of the council during fiscal years 2010 and 2011? Specifically describe the nature and extent of the council's activities as they relate to the council's advisory role as defined and authorized in Section 50-6-121(f), *Tennessee Code Annotated*.

The Council was moved to the Treasury Department effective July 1, 2010. In fiscal year 2011, the Council made a rate recommendation to the Commissioner of DC&I relative to the NCCI experience filing. The council provided House and Senate committees with recommendations on twelve (12) bills dealing with workers' compensation issues, and made suggestions for amendments on several. It provided valuable input to the Commissioner of DLWFD on the recent proposed rule changes regarding the medical fee schedule.

Under the Treasury Department, the Council's openness and transparency to the general public has increased. The meetings of the Advisory Council have been moved from a conference room in a general government office building to the Legislative Plaza where they are open and accessible to the public. The meetings are videostreamed on the General Assembly's website which provides live public

access as well as archiving for the public's post-meeting review. Member information, agendas, minutes, presentations and other relevant documents are also posted on the Treasury Department's website.

The Council timely considered nineteen (19) bills referred by the General Assembly in this last session, and produced a written report on the twelve (12) bills that were not withdrawn or sent for summer study to the Committee Chairs of the Senate Commerce, Labor and Agriculture Committee and the House Consumer and Employee Affairs Committee.

12. Describe any items related to the council that require legislative attention and your proposed legislative changes.

We currently are not proposing any legislative changes to the Advisory Council.

13. Should this council be continued? To what extent and in what ways would the absence of the council affect the public health, safety, or welfare?

The Advisory Council on Workers' Compensation serves in an advisory capacity and serves many, including the Governor, the General Assembly, the DLWFD and the DC&I. It supports the General Assembly by providing recommendations on workers' compensation issues and legislation, including the impact on existing policy. Because the Advisory Council membership includes representatives from employers, employees, and the medical, legal and insurance communities, the in-depth review and discussion of the merits of legislation from all viewpoints is invaluable.

Voting members of the Council are all extremely knowledgeable in the area of workers' compensation. One of the Council's key functions is to hear testimony from lobbyists, industry groups and reports from other state departments, such as the DLWFD and DC&I, to engage in in-depth debate regarding each bill referred for consideration. This process is valuable because it is an alternative to members of the General Assembly being required to perform this process in Committees that are already overburdened with extensive issues to consider. Therefore, the Council's reports constitute an invaluable resource to members of the General Assembly in their consideration of workers' compensation issues.

The non-voting members represent specialized groups that are stakeholders in the workers' compensation process and their knowledge of the impact of the possible changes in the law to their respective fields is invaluable in considering recommendation.

14. Please list all council programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

[Federal financial assistance includes:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal Property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
- (5) Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

28 C.F.R. Sec. 42.102(c)

[The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

28 C.F.R. Sec. 42.102(f)

If the council does receive federal assistance, please answer questions 15 through 22. If the council does not receive federal assistance, proceed directly to question 21.

The Advisory Council does not receive any federal financial assistance.

- 15. Does your council prepare a Title VI plan? If yes, please provide a copy of the most recent plan.**

Not applicable

- 16. Does your council have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.**

Not applicable

- 17. To which state or federal agency (if any) does your council report concerning Title VI? Please describe the information your council submits to the state or federal government and/or provide a copy of the most recent report submitted.**

Not applicable

- 18. Describe your council's actions to ensure that council staff and clients/program participants understand the requirements of Title VI.**

Not applicable

- 19. Describe your council's actions to ensure it is meeting Title VI requirements. Specifically, describe any council monitoring or tracking activities related to Title VI, and how frequently these activities occur.**

Not applicable

- 20. Please describe the council's procedures for handling Title VI complaints. Has your council received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).**

Not applicable

- 21. Please provide a breakdown of current council staff by title, ethnicity, and gender.**

Council Staff consists of the Administrator, who is a Caucasian female.

- 22. Please list all council contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.**

The Advisory Council is party to two (2) contracts:

- By the Numbers Actuarial Consulting, Inc.
 - actuarial services surrounding NCCI filings
 - 5 year contract totaling \$83,250 signed in September of 2011
 - Caucasian female
- Wilstermann, David
 - Statistical analyses of the DLWFD data
 - 5 year contract totaling \$247,000 signed in August of 2008
 - Caucasian male

Tennessee Advisory Council on Workers' Compensation



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ANNUAL REPORT FOR YEAR  
JULY 1, 2010 – JUNE 30, 2011  
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TENNESSEE TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

David H. Lillard, Jr., State Treasurer, Chair
Lynn Ivanick, Administrator

STATE OF TENNESSEE
ADVISORY COUNCIL ON WORKERS' COMPENSATION
ANNUAL REPORT FOR
YEAR JULY 1, 2010 – JUNE 30, 2011

Pursuant to *Tennessee Code Annotated* §50-6-121(c), the Advisory Council on Workers' Compensation hereby submits its report for year July 1, 2010-June 30, 2011 including statistical reports and Tennessee workers' compensation data.

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**STATUTORY DUTIES AND RESPONSIBILITIES
OF THE TENNESSEE ADVISORY COUNCIL ON WORKERS'
COMPENSATION**

The Advisory Council on Workers' Compensation (the "Advisory Council") was initially created by the General Assembly in 1992. The Workers' Compensation Reform Act of 1996 terminated the existing Council and created a new Advisory Council on Workers' Compensation. Subsequent amendments, including the Reform Act of 2004 are recorded at *Tennessee Code Annotated* ("T.C.A.") §50-6-121, which also outlines the authority of the Council, its specific responsibilities and its general duties. Pursuant to Public Chapter 1087, Public Acts of 2010, the administration of the Council was transferred from the Tennessee Department of Labor & Workforce Development to the Tennessee Department of Treasury.

The Council is authorized to:

- Make recommendations to the Governor, the General Assembly, the Special Joint Committee on Workers' Compensation, the Senate Commerce, Labor and Agricultural Committee and the House Consumer and Employee Affairs Committee, the Commissioner of Labor and Workforce Development and the Commissioner of Commerce and Insurance relating to the promulgation or adoption of legislation or rules;
- Make recommendations to the Commissioner of Labor and Workforce Development and the Commissioner of Commerce and Insurance regarding the method and form of statistical data collections; and
- Monitor the performance of the workers' compensation system in the implementation of legislative directives. Develop evaluations, statistical reports and other information from which the General Assembly may evaluate the impact of legislative changes to workers' compensation law.

Further responsibilities of the Advisory Council are provided in T.C.A. Titles 50 and 56. These provisions, among other things, direct the Council to provide the Commissioner of Commerce and Insurance with a recommendation regarding advisory prospective loss cost filings made by the National Council on Compensation Insurance, Inc. ("NCCI"), the authorized Tennessee rating bureau.

Advisory Council Members and Terms

The current Advisory Council is composed of seven (7) voting members, ten (10) non-voting members, and four (4) ex-officio members. The State Treasurer, is the Chair and a voting member, three (3) voting members who represent employees; three (3) voting members who represent employers. The Chair may vote only on matters related to the administration of the Council or its research; the Chair is not permitted to vote on any matter which constitutes the making of a policy recommendation to the Governor or to the General Assembly.

No new positions were added to the Advisory Council in fiscal year 2010-2011. On December 28, 2010, Speaker of the House, Kent Williams appointed Mr. Daniel Pohlgeers as an Employer Representative voting member to complete the term of Mr. Stewart Meadows who relocated outside the State. Mr. Pohlgeers' term is for the remainder of Mr. Meadows' unexpired term, or until June 20, 2012. Mr. Pohlgeer's prior position as a Tennessee Licensed Occupational Therapist non-voting member is vacant.

Additionally, we experienced the retirement of several ex officio members of the Department of Labor and Workforce Development in Sue Ann Head, Bob Henningsen and Commissioner James Neely to whom the Council expresses its thanks for their service to the State of Tennessee. From the Department of Commerce and Insurance we thank Commissioner Leslie Newman for her years of service as well. We welcome new members Commissioner Karla Davis of the Department of Labor & Workforce Development, her designee, Deputy Commissioner Alisa Malone and Commissioner Julie Mix-McPeak of the Department of Commerce & Insurance.

A chart outlining the members of the Advisory Council on Workers' Compensation as of June 30, 2011 with exploratory notes of changes in membership during the fiscal year 2010-2011, follows:

NAME	MEMBER TYPE	REPRESENTING
David H. Lillard, Jr. State Treasurer	Chairman Administrative Voting Member	Ex Officio member
J. Anthony Farmer	Voting Member	Employees
Jack Gatlin	Voting Member	Employees
Jerry Lee	Voting Member	Employees
Bob Pitts	Voting Member	Employers
Daniel Pohlgeers	Voting Member	Employers
Gary Selvy	Voting Member	Employers
Katherine D. Boyte	Nonvoting Member	Tennessee Defense Lawyers Association
David Davenport	Nonvoting Member	Licensed Physical Therapist
Bruce D. Fox	Nonvoting Member	Tennessee Association for Justice
Keith B. Graves, D.C.	Nonvoting Member	Licensed Chiropractor
Stephen E. Johnson	Nonvoting Member	Healthcare Provider
Mayor Kenny McBride	Nonvoting Member	Local Governments
Jerry Mayo	Nonvoting Member	Insurance Companies
Samuel E. Murrell, M.D.	Nonvoting Member	Tennessee Medical Association
A. Gregory Ramos	Nonvoting Member	Tennessee Bar Association
Commissioner James Neely [Designees Sue Ann Head & Bob Henningsen] Commissioner Karla Davis [Designee Alisa Malone] (1)	Ex Officio Nonvoting Member	Dept. of Labor & Workforce Development
Commissioner Leslie Newman, Commissioner Julie Mix- Mc-Peak [Designee for both, Mike R. Shinnick](2)	Ex Officio Nonvoting Member	Dept. of Commerce & Insurance
Senator	Ex Officio Nonvoting Member	Chairing Joint Committee on Workers' Compensation
Representative	Ex Officio Nonvoting Member	Co-Chairing Joint Committee on Workers' Compensation
Vacant	Nonvoting Member	Licensed Occupational Therapist

- (1) Commissioner James Neely's term expired and the term of Commissioner Karla Davis commenced on January 15, 2011.
Sue Ann Head served as Designee for the Labor and Commissioner of Workforce Development until her retirement on February 1, 2011.

Bob Henningsen served until his retirement on April 15, 2011.
Alisa Malone served as Designee from April 25, 2011 until year end.

(2) Commissioner Leslie Newman's term expired and the term of Commissioner Julie Mix-McPeak commenced on January 15, 2011.

Terms of the Non-Ex-Officio Members follow:

	<u>Term of Position</u>
J. Anthony Farmer	July 1, 2010-June 30, 2014
Jack A. Gatlin	July 1, 2010-June 30, 2014
Jerry Lee	July 1, 2008-June 30, 2012
Bob Pitts	July 1, 2010-June 30, 2014
Daniel Pohlgeers	Dec. 28, 2010-June 30, 2012
Gary Selvy	June 21, 2008-June 30, 2012
Katherine D. Boyte	July 1, 2007-June 30, 2011
David Davenport	Oct. 1, 2009-June 30, 2013
Bruce D. Fox	July 1, 2007-June 30, 2011
Keith B. Graves	July 1, 2009-June 30, 2013
Stephen E. Johnson	July 1, 2007-June 30, 2011
Kenny McBride	July 1, 2009-June 30, 2013
Jerry Mayo	July 1, 2009-June 30, 2011
Sam Murrell	July 1, 2010-June 30, 2013
Gregory Ramos	July 1, 2009-June 30, 2013
Occupational Therapist	Sept. 29, 2009-June 30, 2013

ACTIVITIES OF THE ADVISORY COUNCIL

The Advisory Council is required by statute to meet at least two times per year. Throughout this July 1, 2010-June 30, 2011 Council year, the Advisory Council met on six (6) occasions: August, 17, 2010; October 5, 2010; February 28, 2011; March 24, 2011; April 8, 2011 and April 25, 2011.

All approved meeting minutes may be reviewed at the Advisory Council's website <http://treasury.tn.gov/claims/wcadvisory.html> under the Meetings tab. The agenda and video of each meeting is available on the same page.

Throughout the year, the Advisory Council considered several issues impacting the Tennessee workers' compensation system. The following is a synopsis of the subjects which received the most attention

WORKERS' COMPENSATION CASELAW UPDATE

A caselaw update of the 2010 calendar year from the full Tennessee Supreme Court as well as select cases from the Tennessee Supreme Court Workers' Compensation Panel was submitted by the Advisory Council to the General Assembly in January of 2011.

In 2010, the Supreme Court addressed issues of neutral assault, street risk, and the presumption favoring compensability in the *Padilla* case. In *Nichols*, the Court addressed the circumstances in which a layoff is deemed to be a loss of employment. In *Henderson* the Justices discussed the requirements to set aside judgments approving settlements. Other evidentiary hearsay exceptions were addressed in *Carter* and *Arias*. *Excel* outlined the weight to be given to various expert witness testimony.

The report, complete with citations, may be viewed in its entirety via the Advisory Council's website by accessing <http://treasury.tn.gov/claims/wcac/1-14-11Memo.pdf>

WORKERS' COMPENSATION LEGISLATION

During the 2011 legislative session, the Advisory Council reviewed at the request of the 107th General Assembly approximately 19 bills with subject matters directly affecting or touching upon the Tennessee Workers' Compensation Laws.

Three of those bills directly affecting the Tennessee Workers' Compensation Act passed the Senate and House Committees, and the General Assembly. The Advisory Council recommended them for passage. All three were signed by the Governor and are summarized as follows:

Senate Bill 0932 (Senator Norris) / House Bill 1503 (Representative Eldridge)

This bill made various revisions to the Tennessee workers' compensation law including the elimination of the three year waiting period to settle future medical treatment claims and the revision of procedures regarding contact between Authorized Treating Physicians ("ATPs") and Employers or Carriers and their representatives. It provides a presumption that an ATP's decision regarding causation is correct unless shown to be otherwise by a preponderance of the evidence. It further eliminates repetitive motion injuries from coverage unless the employment is shown to be the primary cause of the injury or the injury arose from specific occurrences of the employment.

The Advisory Council recommended approval of the bill with several suggested amendments. After passage by the General Assembly, it was signed by Governor Haslam becoming **Public Chapter 416**. It is effective for injuries occurring on or after June 6, 2011.

Senate Bill 1550 (Senator Ketron) / House Bill 2030 (Representative Curtiss)

This bill clarified that the general contractor of a commercial construction project is the designee permitted to select the three construction service providers who may use their exemptions from workers' compensation coverage.

It further permits five instead of three corporate officers who are engaged in the construction industry to apply for an exemption from coverage under workers' compensation insurance.

It removes the restriction prohibiting an affiliate of an exempt construction services provider from obtaining an exemption themselves.

The Advisory Council recommended approval with amendments suggested by the Advisory Council. After passage by the General Assembly, Governor Haslam signed the bill into law that which was designated **Public Chapter 422** with an effective date of October 1, 2011.

Senate Bill 1785 (Senator Ketron) / House Bill 2047 (Representative Brooks, H.)

This bill changed the standard of proof requirement from a "preponderance of the evidence" to "clear and convincing evidence" for rebutting the presumption that drugs or alcohol were the proximate cause of an injury when a test was either positive or refused. This new standard applies for all employers who are members of the State Drug Free Workplace Program. The Advisory Council recommended approval. After passage by the General Assembly, Governor Haslam signed into law that which was designated **Public Chapter 203**. It takes effect July 1, 2011.

NCCI ADVISORY PROSPECTIVE LOSS COST FILING

The National Council on Compensation Insurance, Inc. ("NCCI") files advisory prospective loss cost and rating values with the Commissioner of the Department of Commerce and Insurance, who presents same to the Advisory Council for recommendation before approving or modifying. The Advisory Council makes written comment to the Commissioner for Advisory Prospective Loss Costs Filings pursuant to T.C.A. §50-6-402(b-d).

The Advisory Council made recommendations regarding NCCI's annual advisory prospective loss cost filing which was submitted to the Commissioner of Commerce and

Insurance on August 13, 2010 and discussed during the Council's August 17th and October 5th, 2010 meetings. Actions regarding this filing are outlined below.

The Council at its August 17, 2010 meeting considered a report from Commissioner Newman's Designee, Mr. Mike Shinnick, on the Workers' Compensation Market Conditions and Environment. Mr. Shinnick reported a favorable -5.1% overall loss cost filing. He advised that lost time frequency continues to decline nationally which is typical in recessionary times, that industry reserve deficiencies were moderate and that company failure rate had been low. He explained that the Tennessee residual market is the smallest in ten years and remains competitive with pricing. He reported that negative factors include an underwriting loss, that further deterioration in the underwriting cycle is possible, and low investment returns continue to pressure those results. The report may be viewed in its entirety by accessing <http://treasury.tn.gov/claims/wcac/8-2010-MarketCond.pdf>

Mr. Thomas G. Redel, CPCU, Senior Vice President, AON Risk Services Central, which serves as the administrator of the Tennessee Assigned Risk Plan, presented an annual report regarding the Tennessee Assigned Risk Plan Data. Mr. Redel explained that although there had been a premium decrease of 25% in 2009, that the 2010 rate of decrease had only been 15% so far, so the rate of decline was decreasing. The report may be viewed in its entirety at http://treasury.tn.gov/claims/documents/assignedriskdataplan_aug2010.pdf

Proposals with supporting trend selections, provisions for loss adjustment expenses, selection of loss development factors and class indications were all presented for review at the October 5, 2010 Council meeting.

Mr. David Wilstermann's Statistical report of the 2009 Workers' Compensation Data revealed that the utilization of the Tennessee Department of Labor and Workforce ("TDLWFD") to settle cases had leveled off at 60%, having been 20% in 2000. Trials are occurring in 1% of cases. The number of weeks to conclusion has reduced from the prior year and, after displaying initial post reform decreases, permanent partial disability percentage amounts, multipliers and medical costs are leveling off or decreasing.

Mr. Kirt Dooley and Ms. Cathy S. Booth of NCCI, Regulatory Services Division, presented a Summary of Tennessee's Voluntary Market Loss Cost Filing proposed to be effective March 1, 2011 indicating a 5.1% decrease.

The Advisory Council received comments from the Council's consulting actuary. Mr. Gregory Alff of Willis of Tennessee, Inc., noted that Tennessee data shows good experience resulting in a recommended negative change in the loss cost. However, Mr. Alff recommended a smaller decrease of -4.7% based upon several factors. (1) he saw the indemnity loss development factor as higher in the most recent three periods and accordingly recommended selecting higher indemnity loss development factors. This adjustment, if implemented alone, would result in an indicated loss cost change of -4.5%.; and (2) he suggested consideration of a revision of the factor to load for loss based expense. He believed the estimated loss adjustment expense of 20.3% as proposed by the NCCI should be adjusted and suggested a lesser factor of 20.0% be considered, thereby resulting in an indicated loss cost change of -5.3% if considered alone. The two adjustments combined would result in an aggregate adjustment of -4.7%.

The consulting actuary for the Department of Commerce & Insurance, Ms. Laura Sprouse, of Select Actuarial Services, made her recommendation to modify the filing of the NCCI to a range from -5.5% to -4.9%. This stemmed from Select's belief that (1) based on their own trending, the medical loss ratio trend should be 0 rather than +.5 predicted by NCCI and (2) the loss adjustment expense (LAE) ratio was more than 21% rather than the 20.3% that was proposed. Using a 1.8% annual trend based on the latest four years of data, they projected LAE to be 21.2%. Ms. Sprouse acknowledged that the standard methodologies used by NCCI were sound and the filing reflected Tennessee experience over the most recent two full policy periods (policies effective from 1/1/2007 through 12/31/2008).

After consideration of the presentations and the comments and discussion amongst the members, the voting members of the Advisory Council recommended adoption of a -5.3% change in loss cost to become effective on March 1, 2011 for the voluntary market. The Council made no further recommendations with respect to the remainder of NCCI's filing.

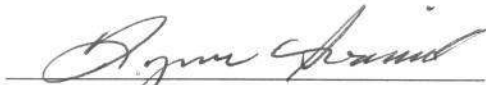
CONCLUSION

The Workers' Compensation Advisory Council met on six (6) occasions from July 1, 2010 to June 30, 2011. This Annual Report is intended to give a synopsis of the topics considered during that time period. The Advisory Council appreciates the opportunity to be of service to the Governor and the General Assembly as well as the employees and employers of the State of Tennessee.

Respectfully submitted on behalf of the
Advisory Council on Workers' Compensation



David H. Lillard, Jr., Treasurer, State of Tennessee
Chairman



Lynn Ivanick
Administrator

APPENDIX: 2011 LEGISLATIVE RECOMMENDATIONS OF COUNCIL

The following is a list of recommendations from the Advisory Council regarding bills filed in the 2011 Session of the 107th General Assembly:

SB 0040 (Faulk)/HB 0205 (Harrison) recommended **approval** of this bill on 2/28/11.

SB 0415 (Barnes)/HB 0163 (Pitts) encompassed in SB1550, recommended **approval** of this bill on 4/8/11.

SB 0471 (Tracy)/HB 0506 (Brooks) recommended **against** passage of this bill on 2/28/11.

SB 0560 (McNally)/HB 0490 (Eldridge) bill allowing suit vs. third party tortfeasors, Council commented on 2/28/11 that it did not change present law.

SB 0932 (Norris)/HB 1503 (Eldridge) recommended **approval** on 4/25/11 **provided** the standard of proof was changed from "clear & convincing" to "a preponderance of the evidence" in Sections 8 & 9, which was done.

SB 1304 (Johnson)/HB 1083 (Eldridge) recommended **against** passage of the bill.

SB 1313 (Johnson)/HB 1300 (Eldridge) recommended **approval** 2/28/11, but if amended, want amendments to come back to Council.

SB 1481 (Marrero)/HB 1527 (Turner, M.) failed to achieve a majority vote on 2/28/11, so **no recommendation** from Council.

SB 1550 (Ketron)/HB 2030 (Curtiss) recommended **approval** for passage of this bill on 4/8/11 after final review of amendment.

SB 1757 (Ketron)/HB 1191 (Curtiss) recommended **approval** for passage of this bill on 2/28/11.

SB 1785 (Ketron)/HB 2047 (Brooks, H.) recommended **approval** of this bill on 2/28/11.

SB 1839 (Herron)/HB 0581 (McDaniel) religious exemption, recommended **against** passage of the bill on 4/8/11.

SB 1950 (Southerland)/HB 2107 (Curtiss) recommended **approval** for passage of this bill on 2/28/11.

SB 1986 (Stewart)/HB 1758 (Pitts) failed to achieve a majority vote on 3/24/11, therefore **no recommendation** from the Council.

SB 2019 (Stewart)/HB 1045 (Matheny) recommended **against** passage of the original bill on 2/28/11. Sponsor amended the bill to include a pain management section and presented at the 4/8/11 meeting just requesting comments and not a vote. Sponsor sending to summer study.

SB 2023 (Stewart)/HB 1757 (Pitts) failed to achieve a majority vote on 3/24/11, therefore **no recommendation** from the Council.

STATE OF TENNESSEE



David H. Lillard, Jr., Chair
State Treasurer
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Members

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Advisory Council on Workers' Compensation

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Senator Jim Tracy
Representative Charles Sargent

January 14, 2011

MEMORANDUM

TO: Honorable Bill Haslam, Governor of Tennessee
Honorable Beth Harwell, Speaker of the House of Representatives
Honorable Ron Ramsey, Lieutenant Governor
Honorable Jack Johnson, Tennessee State Senator
Honorable Jimmy Eldridge, Tennessee State Representative

FROM: David H. Lillard, Jr., Tennessee State Treasurer and
Chairman, Advisory Council on Workers' Compensation

SUBJECT: Report on Significant Tennessee Supreme Court Cases affecting Workers' Compensation

Pursuant to Tennessee Code Annotated § 50-6-121(g), the Advisory Council on Workers' Compensation hereby issues the attached report reviewing significant Tennessee Supreme Court decisions involving workers' compensation matters for the 2010 calendar year. This report includes a summary of significant decisions, several of which are outlined in detail, but most of which are included in appendix form for easy reference. A majority of the cases are Supreme Court Special Workers' Compensation Panel opinions which more clearly define or uphold the law as it stands, albeit under the unique facts and circumstances presented. If I can be of further assistance, please contact me at (615) 741-2956 or Lynn Ivanick, Administrator for Advisory Council on Workers' Compensation, at (615) 741-4358.

STATE OF TENNESSEE

Advisory Council on Workers' Compensation



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### SIGNIFICANT SUPREME COURT DECISIONS CALENDAR YEAR 2010

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TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

David H. Lillard, Jr., State Treasurer, Chair
Lynn Ivanick, Administrator

Significant 2010 Tennessee Supreme Court Workers' Compensation Decisions

INTRODUCTION

Pursuant to Tennessee Code Annotated § 50-6-121(g), the Advisory Council on Workers' Compensation is required to issue this report reviewing significant Tennessee Supreme Court decisions involving workers' compensation matters for each calendar year. Due to its statutorily mandated due date, opinions filed later than early December will be on the 2011 report. This report includes a summary of significant decisions, several of which are outlined in detail, but most of which are included in appendix form for easy reference. A majority of the cases in the appendix are Supreme Court Special Workers' Compensation Panel opinions which more clearly define or uphold the law as it stands, albeit under the unique facts and circumstances presented.

FULL COURT REVIEW

Padilla addresses the concepts of neutral assault, street risk and the presumption favoring compensability.

Padilla v. Twin City Fire Ins. Co., 324 S.W.3d 507 (Tenn. 2010)

Employee, Jose Sanchez, was found on Employer's premises deceased from gunshot wounds. Employee had not been robbed and there was no burglary of Employer's premises amidst the evidence in this unsolved homicide. Employee's widow filed suit in Chancery Court for Davidson County requesting death benefits under Tennessee's workers' compensation laws.

Even though the location was in a high crime area and the widow theorized that her husband may have interrupted a break-in, the evidence as a whole did not establish a connection between the business and the death. The claim did not, therefore, meet the element of "arising out of" the employment relationship since the fatal assault did not result from the employment situation. The Court additionally found no evidence of the Employee's personal circumstances which would have lead to the assault. As such, it was determined to be a "neutral assault" and not one for which death benefits would issue under Tennessee's workers' compensation statutes. *Wait v. Travelers Indemnity Co. of Illinois*, 240 S.W.3d 220, 227 (Tenn. 2007).

Additionally, the Employee did not have exposure under the proposed "street risks" doctrine since Employer was a manufacturer specifically not open to the general public.

The widow was unable to meet her burden of proof under any of her proposed theories, therefore her claim was denied and no compensation was awarded.

In upholding the Trial Court's decision, the Supreme Court Panel agreed that the neutral assault was not compensable under Tennessee's workers' compensation laws.

The widow then requested full court review, which was granted.

The full Supreme Court upheld the Panel and Trial Court decisions agreeing on the neutral assault and street risks doctrines and indicating that it was not willing to incorporate, in a permanent way, a non-statutory presumption favoring compensability under these circumstances.

Justice Gary R. Wade dissented indicating that the ruling was more in line with the minority rulings rather than following the intent of the statute. Justice Wade pointed out that when there is "reasonable doubt" surrounding the claim's compensability as there was under these facts, the remedial purpose of the Workers' Compensation Act mandates a decision in favor of the employee. In the alternative, Justice Wade believed the "street risk doctrine" was, in particular, directly applicable to this situation since Employee was authorized to open the Employer's business in an area prone to criminal activity, thereby establishing a causal link between the death and the employment sufficient to sustain the widow's claim.

Impact on existing policy: Previous policies regarding the determination as to whether an attack is a "neutral assault" and whether an injury is "arising out of and in the course and scope of" one's employment remain intact with the Court's decision. It is unclear, however, whether this decision represents any departure from prior judicial precedent with respect to the "street risk" doctrine and the "presumption in favor of the employee" when there is *reasonable doubt* as to the circumstances leading to the injury.

Nichols outlines what circumstances determine whether a layoff is deemed to be a loss of employment.

Nichols v. Jack Cooper Transport Co. et al., 318 S.W.3d 354 (Tenn. 2010)

Employee suffered two compensable work injuries and returned to work at the pre-injury wage but was later laid off for economic reasons. Employee then voluntarily retired. At issue was whether the layoff constituted a "loss of employment" under the workers' compensation laws for purposes of reconsideration of his previously settled neck claim and, along the same lines, whether he made a "meaningful return to work" for purposes of determining if the lower caps should apply for his pending shoulder claim.

Employee was laid off in April 2007 due to the retooling shut down of a plant which fed Employer's business. It was undisputed that Employee elected to retire in May 2007 in order to maintain medical insurance rather than for reasons related to the injuries. The trial court indicated that if the evidence showed Employee lost his employment prior to his retirement, it would be considered a loss of employment allowing for both reconsideration of the previously settled neck claim *and* a failure to return to work prohibiting the application of the lower statutory cap for the pending shoulder claim.

The trial court outlined three items it took into consideration. First, the court determined that the layoff didn't fall within the normal and customary nature of layoffs

for this employer. This layoff was longer, affected more senior employees, and was at a different time of the year than commonly experienced. Second, recall was not expected. The layoff was announced to be indefinite, so the Court considered it reasonable of Employee to assume he would not be recalled. Third, Employee did not receive any type of pay or benefits during the period of the layoff. All three of these factors led to the trial court's decision that the loss of employment legally occurred in April 2007. Since the Employee's May 2007 retirement came after the loss of employment, the trial court determined Employee was entitled to reconsideration of the previously settled neck claim and was not capped at lower amount for the pending shoulder claim.

Employer appealed the decision arguing that Employee had declined offers to work in facilities in other states during the layoff, that the layoff was expected rather than unusual for this Employer and that "but for" the voluntary retirement, the Employee would have been called back two weeks later. The Panel agreed and found that the employee's own voluntary retirement was the "loss of employment" trigger and overturned the trial court's decision.

The Employee requested review by the full Court. With a recession in full swing and the incidence of layoff on the rise, the Supreme Court granted full court review to address the important and relevant issue of *whether* and *when* a layoff constitutes a "loss of employment" for purposes of Tennessee's workers' compensation laws. The Court found this layoff not to be of the usual and customary type and the offer of work in other terminals to be insufficient to change Employee's work status since the living and travel expenses outweighed the potential income. They further determined there was no expectation of recall and the retirement was previously unplanned.

The full court indicated that each claim must be determined by the date the employment relationship ended chronologically considered with the date of the Employee's retirement. They found the date of loss of employment to be the April 2007 layoff date preceding the May 2007 retirement date. In reversing the Panel and reinstating the trial court's judgment, the full Court concluded that the employment relationship terminated when the employee was laid off, rather than when he subsequently retired. Since the employee was not, therefore, meaningfully returned to work, he qualified for reconsideration of his first injury and was not subject to the lower cap on the second.

Impact on existing policy: The Court distinguished this set of circumstances from its decision in *Edwards* because Edwards was receiving substantially the equivalent of his pay and benefits during the layoff period. When you have both a layoff and retirement, each case must be viewed chronologically under its own facts. If the layoff is out of the ordinary in size, time of year, length and it appears there is no expectation of recall, then a "loss of employment" date is set thereby. If that date precedes a voluntary retirement date, reconsideration of a previously settled claim is permitted and any pending claim is not subject to the lower caps. Likewise, if that "loss of employment" date **follows** the voluntary retirement date, reconsideration will not be permitted on a previously settled claim and the lower cap will apply to a pending claim.

Henderson addresses Tennessee Rule of Civil Procedure 60.02 regarding setting aside a judgment approving a settlement.

Henderson v. SAILA, Inc., 318 S.W.3d 328 (Tenn. 2010)

An unrepresented Employee agreed, via affidavit, to the approval of her permanent partial disability settlement. She later filed suit attempting to have the award set aside for fraud and mistake. All evidence before the trial court indicated that Employee had signed the affidavit outlining her understanding and acceptance of not only the amount of the award, but to the award's approval in her absence (per her request). Although the settlement was on the low end, it was still within the realm of "substantially" that to which she was entitled per T.C.A. § 50-6-225(e)(3). The trial court denied her claim.

Employee appealed. After the Panel heard oral argument, but before a decision was rendered, the full Court took the case to consider her request under Tennessee Rule of Civil Procedure 60.02 to set aside a judgment approving a settlement. The trial court's denial of her request for relief was affirmed.

Impact on existing policy: This ruling resulted in no change to Tennessee Rule of Civil Procedure 60.02 regarding when settlements will be set aside. Employees, especially unrepresented Employees, should be mindful that settlements are final.

Carter and Arias address the admissibility of written medical evidence. In both cases, the same physician was unavailable for cross examination due to his own illness). Arias was decided prior to Carter and cited therein. Together they address evidentiary hearsay exceptions under Tenn. Rules of Evidence, 801-804 and T.C.A. § 50-6-235.

Carter v. Quality Outdoor Products, Inc., et al., 303 S.W.3d 265 (Tenn. 2010)

Employee filed a workers' compensation complaint and, pursuant to T.C.A. § 50-6-235(c)(2), provided proper notice of his intent to rely at trial on a physician's report. The Employer/Carrier timely objected and properly filed notice of its intent to depose the physician under the same statute.

The Employer was unable to depose the physician, however, due to the doctor's illness, so moved to exclude his report. The trial court denied the motion to exclude the physician's report but granted Employer/Carrier permission to seek an interlocutory appeal pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure.

The Supreme Court granted the appeal and found that, even though the Independent Medical Examination (IME) by the doctor was followed up with both a properly submitted C-32 Standard Form Medical Report for Industrial Injuries and a detailed written report assigning an impairment rating, the physician's unavailability for cross examination rendered the report inadmissible.

The Supreme Court also agreed with Employer/Carrier that the report was not otherwise admissible under the “business records” hearsay exception of the Tenn. Rules of Evid. since this doctor’s report was based on an IME performed specifically in anticipation of litigation as opposed to a medical record kept in the normal course of business. Rule 803(6), 804. The report did not fall under any hearsay exception regarding unavailable declarants either, and as such was inadmissible. Rule 804(b). Accordingly, the trial court’s decision to allow the report was reversed.

Impact on existing policy: Medical reports of IME physicians are inadmissible if the doctor is not available for cross examination. The reports are, likewise, not automatically admissible as a business record since an IME physician is hired specifically for litigation, and therefore falls outside the “normal course of business” hearsay exception.

Arias v. Duro Standard Products Company, et al., 303 S.W.3d 256 (Tenn. 2010)

Employee sought benefits under workers’ compensation laws for an occupational disease and offered an Independent Medical Examination (IME) report in support of causation and permanency. Employer/Carrier objected to the admission of the report citing T.C.A. § 50-6-235(c) and claiming its statutory right to depose the physician thereunder. The physician became too ill, however, to allow for such cross examination.

The Employee argued that § 50-6-235(c) was not the exclusive means of introducing written reports in workers’ compensation cases and that the report fell under the hearsay exception for records maintained in the normal course of business. Tenn. Rules of Evid. 803(6). Employer objected. The trial court overruled the objection, admitted the report and awarded benefits to Employee. Employer appealed.

The Supreme Court found that the IME report should not have been admitted into evidence under the workers’ compensation statute without the opportunity of cross examination upon proper notice and timely objection as outlined in the statute. The Court pointed out that it is also required that the deposition be taken within a reasonable time, which, if not pursued, will waive the objection and allow the admission of the report.

In reviewing the argument of admissibility under the Rules of Evidence, the Supreme Court referred to its previous decision in the unpublished case of *Baker v. Sally Beauty Supply*, No. 02Sol-9709-CH-0078, (Tenn. 1998) wherein it held that since the T.C.A. § 50-6-235(c) statute was more *specific* than the Rule 803(6) *general* statute, the more specific T.C.A. should be given effect.

The Court overruled its *Baker* decision pointing out that the legislature intended for the Rules of Evidence to *complement* the Workers’ Compensation Law, and so determined that T.C.A. § 50-6-235(c) and Rule 803(6) were not inconsistent, but rather, provided *alternative* means of introducing medical evidence in workers’ compensation cases. The Court ruled that neither the statute nor the rule was the “exclusive” method of admissibility.

The alternative mean of using Rule 803(6), does not, however, eliminate proponent’s satisfaction of that hearsay exception in order to submit the evidence. The Court determined that the report *did not* fall within the business records exception because the

IME report was not created as a regular course of action in business, but was specifically prepared for litigation by one side, and consequently inadmissible.

Having decided that the medical report was inadmissible, the Court determined that, without the report, there was insufficient evidence to establish either causation or permanency, so vacated the trial court's award and dismissed the Complaint instead of remanding.

Impact on existing policy: T.C.A. § 50-6-235(c) is not the exclusive means of introducing written medical reports in workers' compensation cases. The Tennessee Rules of Evidence may serve as a basis for the admission of such reports *if* the report satisfies an exception to the hearsay rule. *Arias* overruled *Baker*.

Excel speaks to the trial court's discretion regarding weight and admission into evidence of records or testimony of a treating physician as opposed to the independent medical examination (IME) report of a full-time "expert" physician prepared in anticipation of litigation.

Excel Polymers, LLC v. Broyles, 302 S.W.3d 268 (Tenn. 2010)

In this occupational disease case, a twenty-nine year Employee with long term exposure was awarded permanent total disability by the trial court, then died two days later. His widow filed an additional motion for consideration after his death.

Employer appealed on grounds that the treating physician's testimony establishing causation should not have been admitted, that Employee failed to prove his injury resulted from an occupational disease, and that the trial court erred in its disposition of the widow's motion and suggestion of death following the award.

The Supreme Court determined that the treating physician's testimony was properly allowed as the trial court had weighed the physician's credibility having already been informed of defense counsel's criticisms regarding the doctor's certainty and knowledge. The Court reiterated that it is within the trial court's discretion to determine if such expert testimony is admissible under the Tenn. Rules of Evid.

No ruling was made by the trial court on the motion and suggestion of death since, although it was accepted, it was filed *post* trial court proceedings. The Supreme Court advised that a separate action would have been the better route. However, since no action had been taken, the Court affirmed the judgment of the Panel and trial court and remanded the case for a determination as to the employee's legal dependents and, if proper, the amount of death benefits owed them.

Impact on existing policy: The trial court has discretion regarding the admissibility of evidence and weight to be given competing physicians' opinions. The trial court here chose to give more weight to a treating physician's opinion regarding causation as compared to an opinion from a physician considered to be a "full time expert witness" hired for litigation purposes and without actual practical field experience. The court may

logically give greater weight to the opinion of a physician who has actually *treated* the patient versus one who is hired for litigation purposes and may have only seen the patient once or simply reviewed the medical records without perhaps even seeing the patient.

Further, the six items outlined in T.C.A. § 50-6-301 regarding whether an injury is an occupational disease remain intact.

Time periods of temporary total disability must be supported by medical evidence.

Austin v. Genlyte Thomas Group, LLC et al., Tenn. Workers Comp. Panel July 12, 2010 THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee alleged a back injury. The authorized treating physician did not find causation, so the Employer denied the claim. The trial court found the injury compensable based upon an independent medical examination (IME) physician's opinion and awarded permanent partial disability benefits as well as past due temporary total disability benefits.

The Employer appealed. The Panel found that temporary total disability benefits may only be awarded during the specific time periods for which they are adequately supported by the medical evidence. The full Supreme Court affirmed and adopted the findings of fact and conclusions of law of the Panel and made the decision of the Panel the judgment of the Court.

Impact on existing policy: This case reiterates the fact that time periods during which temporary total disability benefits are requested must be specifically supported by medical evidence.

SUPREME COURT SPECIAL WORKERS' COMPENSATION PANEL DECISIONS

Appeals of trial court decisions are referred directly to the Supreme Court's Special Workers' Compensation Appeals Panel for hearings. The Panel reports its findings of fact and conclusions of law and such judgments automatically become the judgment of the full court in 30 days barring the grant of a motion for review. Tennessee Supreme Court Rule 51 and Tenn. Code Ann. § 50-6-225(e).

Blake applies the new 2010 law regarding the reduction in hours or pay of 50% of a location's workforce not changing an employee's "return to work" status.

Blake v. Nissan North America, Inc., et al., Tenn. Workers Comp. Panel, November 10, 2010 (No. M2009-02173-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee sustained a compensable injury to his right arm. Upon recovery from arm surgery, he returned to work at the same pay. Eighteen months after his return to work, there was a plant wide reduction in hours from 40 to 32 in an effort to save jobs due to a downturn in the economy. Additionally, the Employer offered a buy-out/resignation package to attempt to thin its workforce.

While working the reduced hours, Employee voluntarily took the buyout offer and resigned. When it later came time for settlement of his injury, trial court held that Employee didn't have a meaningful return to work because of the reduction in work hours, so did not apply the lower cap in its award.

The employer appealed contending that the "return to work" status should not change when a plant-wide event affecting all employees occurs. Employee, himself, testified that he thought the reduction in hours was a great idea to prevent layoffs and save jobs.

The Panel applied the new 2010 legislative amendments to T.C.A. § 50-6-241(d)(1)(B)(iii) (Act of June 11, 2010, ch. 1034, §1, 2010 Tenn. Pub. Acts __) which direct that if one location is affected by a pay or hour reduction to at least 50% of its workforce, then the status of the employee doesn't change for either reconsideration or application of lower cap purposes. Accordingly, the Panel modified the trial court's judgment and indicated that there was no easy formula, but rather that the circumstances of each case would need to be reviewed to determine the proper outcome.

SUPREME COURT DECISIONS IN NON-WORKERS' COMPENSATION CASES WITH THE POTENTIAL TO AFFECT WORKERS' COMPENSATION CLAIMS

Gossett v. Tractor Supply, 320 S.W.3d 777 (Tenn. 2010)

Employee claimed he was discharged in retaliation for his refusal to participate in illegal activity. Employer had requested Employee look for creative ways to lower his *previously submitted* inventory reserve analysis. Employee contended that if he removed products from the inventory reserve as so instructed, it would artificially increase the quarterly earnings statement/report to the Securities & Exchange Commission which would violate federal securities regulations. Employee refused and was terminated shortly thereafter.

Although this case primarily addressed issues of Summary Judgment and its proper application, the Court therein reiterated the protected status of either a whistleblower or a person who refuses to partake of illegal activity. It reminded us that once a complainant provides a causal link between his/her termination and the exercise of a protected right (filing a workers' compensation claim would be one example) or compliance with clear public policy, then the burden shifts to the Employer to show a non-pretextual, legitimate reason for the termination.

Jane Doe and John Doe v. Walgreens Company, et al. Tenn. Ct. App. November 24, 2010 (No. W2009-02235-COA-R3-CV)

Employee was a pharmacy technician at Employer. Employee purposefully obtained her personal medications from a different pharmacy location of Employer to protect her privacy and, as such, was both an employee and a customer of Employer. Co-workers inappropriately accessed a secure database, discovered Employee's HIV positive status, and disclosed said information both generally and to Employee's fiancée.

Employee and fiancée sued Employer. The trial court granted Employer's motion to dismiss the suit because of the exclusive remedy rule under the workers' compensation act. T.C.A. § 50-6-108.

Employee appealed. The Court of Appeals found that the injuries sustained did not solely arise out of Employee's employment and that she had sufficiently pled causes of action that fell outside the workers' compensation law. The court pointed out that "[t]here is no formula which will clearly defines the line between accidents and injuries which arise out of and in the course of employment and those which do not." ***DeBow v. First Inv. Prop., Inc.***, 623 S.W.2d 273, 275 (Tenn. 1981). Instead, "each case must be decided with respect to its own attendant circumstances and not by resort to some formula." ***Braden v. Sears, Roebuck & Co.***, 833 S.W.2d 496, 499 (Tenn. 1992). Additionally, Tennessee courts have created an exception to the exclusivity provision for intentional torts committed by an employer against an employee; these torts give rise to a common-law tort action for damages. ***Mize v. Conagra, Inc.***, 734 S.W.2d 334, 336 (Tenn. Ct. App. 1987).

The Court of Appeals reversed the trial court and remanded the case.

CONCLUSION

Pursuant to Tennessee Code Annotated § 50-6-121(g), the Advisory Council on Workers' Compensation respectfully submits this report on significant Supreme Court decisions. An electronic copy of the report will be sent to the Governor and to the Speaker of the House of Representatives, the Speaker of the Senate, the Chair of the Consumer and Employee Affairs Committee of the House of Representatives, the Chair of the Commerce, Labor and Agriculture Committee of the Senate, and the Chair and Co-chair of the special Joint Committee on Workers' Compensation. A printed copy of the report will not be mailed. Notice of the availability of this report will be provided to all members of the 107th General Assembly pursuant to Tennessee Code Annotated § 3-1-114. In addition, the report will be posted under the Advisory Council on Workers' Compensation tab on the Treasury Department website.

Respectfully submitted on behalf of the
Advisory Council on Workers' Compensation,

David H. Lillard, Jr., State Treasurer, Chair

APPENDIX

Cases of Interest

Hill v. Whirlpool Corporation, __ S.W.3d __ (Tenn. 2010) Tenn. Workers Comp. Panel October 21, 2010 (No. M2009-01858-SC-WCM-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

After a plant closure, Employee sought reconsideration of a prior workers' compensation settlement for right shoulder and elbow injuries under T.C.A. § 50-6-241(a)(2) (2008). Employer claimed the elbow injury was a separate injury and a scheduled member not entitled to reconsideration under T.C.A. § 50-6-241(a)(1).

The trial court allowed reconsideration for both injuries as it found them to be concurrent gradual injuries. Additionally, the trial court awarded Employee an amount over the 6x cap due to its finding that Employee had proven three of the four factors required to so breach the impairment cap under T.C.A. § 50-6-242(a).

Employer appealed and the Panel affirmed the trial court's decision that the injuries were concurrent, but, upon review of vocational expert testimony, which it found to be lacking, concluded that employee had not satisfied his burden of proof under T. C. A. § 50-6-242(a), and so modified the trial court's award by applying the cap to the permanent partial disability award.

Employee appealed the Panel's decision, but the full Supreme Court denied the motion. The Panel decision was adopted and affirmed.

Griffin v. Walker Die Casting, Inc., et al., Tenn. Workers Comp Panel, November 10, 2010 (No. M2009-01773-SC-WCM-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee sought to have a total left knee replacement based upon a previously settled compensable left knee contusion claim. The trial court awarded him benefits including the cost of surgery and attorney's fees. The Employer appealed.

Employee relied solely on written medical records rather than a current deposition or testimony of a physician linking the knee replacement causally to the work related knee contusion. The medical records since the 2007 settlement repeatedly referred to Employee's bilateral degenerative joint disease and osteoarthritis as the reason for the need for treatment. None established causation. Employee failed to sustain his burden of proving the causal relationship between the injury and the need for the total knee replacement via a preponderance of expert medical testimony, so the Panel reversed the trial court's award.

Gardner v. Randstad North America, L.P., Tenn. Workers Comp. Panel, November 1, 2010 (No. M2009-01214-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee complained of a work related left arm injury. Employer denied causation. The trial court awarded benefits for the left wrist, left elbow and left shoulder. Additionally, the trial court ordered payment to the physician and instructed that the

physician should reimburse TennCare. Employer appealed contending the C-20 First Report of Injury should not have been admitted into evidence and that there were intervening acts terminating its responsibility, among other items.

Although the physician testified at trial that he remembered Employee complaining about her shoulder injury, nothing was in his notes to so document. Next, there was some cloudiness regarding contradictory testimony of two altercations which took place *after* the workplace accident and whether they affected the injury.

The Panel concluded that the evidence supported the claim for Employee's arm, but found that the evidence did not support the trial court's ruling regarding her shoulder. Additionally, the Panel advised that the Employer/Carrier must pay third party providers directly. The case was remanded to the trial court for a determination of benefits for the arm *only* and for entry of a proper order regarding reimbursement of medical expenses to both the physician and TennCare directly.

Calvin D. Ervin v. Jones Bros., Inc, et al. and Kevin D. Ervin v. Jones Bros., Inc, et al.,
Tenn. Workers Comp. Panel, October 22, 2010 (Nos. M2008-02755-WC-R3-WC,
M2008-02753-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE
CITED EXCEPT AS PROVIDED BY TENN. S.CT. RULE 4.

This consolidated appeal involves two employees who were injured while traveling in a personal vehicle during lunchtime while going from one job site to another.

Employees Calvin and Kevin dropped Kevin's car off for repairs in Clarksville. Their supervisor picked them up in Employer's van to take them to a job site in Nashville. After completion of that job, supervisor drove employees back to Clarksville to pick up their car and informed them that he was going to pick up their paychecks before heading to a new job site across town for which he gave them directions. Supervisor told employees that they could take a lunch break if they wanted, but they skipped lunch and headed to the new job site so as not to risk losing their jobs if they weren't prepared prior to the arrival of the asphalt truck. On the way to the new job site, with Kevin driving and Calvin a passenger, they were involved in an automobile accident.

It is undisputed that Employer provided an unpaid, 30-minute lunch break to its employees and that the employees would not be paid for working until the Supervisor arrived at the job site. Further, Employer did not pay their employees for mileage or for maintenance of their personal vehicles, because its employees were not considered to be on the clock when driving to and from job sites.

Medically, the parties produced dueling physician reports regarding causation and impairment. Based upon all of the evidence, the trial court found the injuries compensable and awarded benefits for permanent partial impairment to both Employees.

The Employer appealed, arguing that the Employees were not injured in the scope of employment and the injuries did not arise out of employment citing *Howard v. Cornerstone Med. Assoc.*, 54 S.W.3d 238 (Tenn. 2001) wherein the employee was a physician who used his own personal vehicle to travel between his employer's office and the various locations required to work, whether that be a hospital, clinic or nursing home. When the physician was in an accident between his home and the first location, he was

not yet considered to be working for the employer and so the injuries were not compensable. *Id.* At 240.

The Panel indicated that this case presented a “close call” but distinguished these facts from those in *Howard* since the Employees herein were not on their way to work at the onset of their workday, nor were they leaving work at the end of their work day. They had already begun their workday and were traveling to a new job site, therefore the travel was deemed to be “for” their Employer and the injuries arising out of that employment compensable. The Panel did modify the trial court’s ruling on the extent of disability, however, indicating that the proof of permanent impairment was weak. It reduced the award for each Employee and held each of them responsible for a portion of the costs of the appeal.

Williams v. United Parcel Service, et al. __ S.W.3d __, Tenn. Workers Comp. Panel, September 28, 2010 (No. M2009-02334-WC-R3-WC)

Employee had a 2006 compensable *left* knee injury. He later filed a claim for benefits for injury to his *right* knee resulting from over-compensation due to the left knee injury. The employer denied liability for the right knee and presented a Medical Impairment Registry (“MIR”) report in support prepared pursuant to T.C.A. § 50-6-204(d)(5) (Supp. 2009). The trial court, however, sustained the Employee’s objection to the introduction of that report and awarded permanent partial disability benefits for each leg.

The Employer appealed, claiming error for the exclusion of the MIR report and for the determination that the right knee was a separate compensable injury. The Panel affirmed the trial court’s judgment.

Princinsky v. Premier Manufacturing Support Services, Inc., et al., Tenn. Workers Comp. Panel, September 23, 2010 (No. M2009-00207-SC-WCM-WC). THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee suffered a compensable 2002 injury. Initially, she was able to return to work and settled that claim properly under the lower cap. In 2005, Employee suffered another workplace injury from which she was unable to return to work. She settled the 2005 injury without being subject to the lower cap accordingly. Employee then sought reconsideration of her 2002 settlement under T.C.A. § 50-6-241(a)(2). The trial court found that Employee was permanently and totally disabled as a result of that injury and awarded benefits accordingly.

The Employer and the Second Injury Fund have appealed. The Panel affirmed the trial court’s decision that Employee was permanently and totally disabled from the 2002 injury, but found that it failed to offset the award by benefits previously provided, so the case was remanded for correction of that error only.

Douthit v. Griffin Industries, Inc. and Liberty Mutual Group, Tenn. Workers Comp. Panel, September 08, 2010, (No. M2009-01857-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee suffered a compensable injury to his left knee, returned to his employment and settled the claim within the lower caps as appropriate under T.C.A. § 50-6-241(d)(1)(A). Employee then had a second injury. A committee of co-workers determined that both injuries were preventable and Employee was terminated for

violation of company rules. Employee filed for reconsideration and the trial court determined that Employee's behavior did not amount to the level sufficient to deny reconsideration and that he was, therefore, eligible.

Employer appealed. The Panel affirmed the trial court's decision to permit reconsideration

Meeks v. Hartford Insurance Company of the Midwest, Tenn. Workers Comp. Panel, August 30, 2010 (No. W2009-01919-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Meeks was heard before the new law went into affect, so is an opposite result from Blake, cited earlier.

Employee suffered two compensable injuries on the same day. Before he reached maximum medical improvement, his Employer was sold to another entity. The trial court held that the corporate transaction/sale caused a loss of employment pursuant to T.C.A. § 50-6-241(d) and awarded permanent partial disability benefits without applying the lower cap.

Employer appealed contending that the change in stock ownership did not amount to a loss of employment. The Panel affirmed the trial court's judgment.

Tomlinson v. Zurich American Insurance, Tenn. Workers Comp. Panel, August 30, 2010 (No. W2009-01350-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

The Panel affirmed the trial court's decision that the sale of the employer amounted to a loss of employment under T.C.A. § 50-6-241(d).

Hughes vs. Robert Brent d/b/a Apartment Maintenance Specialists, et al., Tenn. Workers Comp. Panel, August 25, 2010 (No. E2009-01377-WC-R3-WC). THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

The Panel reversed the trial court's grant of summary judgment in favor of Employer and held that Employee's action was not barred by the one year statute of limitations under T.C.A. § 50-6-203(b) within which to file for a benefit review conference, and was, instead, tolled by the filing of his request for assistance. Remanded with instruction not to penalize an employee for using the administrative process as this would subvert the purpose of the workers' compensation statute.

Tuten v. Johnson Controls, Inc., et al., Tenn. Workers' Comp. Panel, August 25, 2010 (No. W2009-01426-SC-WCM-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee suffered a compensable work injury, gave notice and began receiving treatment. Employer "sold" to another company which continued operations. Employee had surgery, returned to work, but was then permanently laid off. Employee brought action against both Employers, each of which argued that the other was the responsible party. The trial court found the "purchasing" Employer responsible and awarded compensation based upon an impairment rating achieved through the Medical Impairment Registry (MIR) program. The Panel affirmed the trial court's award.

Mayes vs. Peebles, Inc., Tenn. Workers Comp. Panel, August 23, 2010, (No. E2009-02030-WC-R3-WC). THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee settled his compensable injury, but his authorized treating physician (ATP) later recommended surgery. The Employer/Carrier's utilization review (UR) program declined to approve the surgery. Employee appealed without success, then sued for coverage. Employer claimed failure to exhaust administrative remedies. The Panel affirmed the trial court's decision to compel the authorization of the surgery as well as for an award of attorney's fees for Employee.

Richardson vs. James Brown Contracting, Inc. d/b/a James Brown Trucking Co., et al., Tenn. Workers Comp. Panel, August 18, 2010 (No. E2009-01785-WC-R9-WC). THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

The injured Employee was an owner/operator of a tractor trailer, and, as such, an independent contractor. He had, however, contracted with his carrier for workers' compensation coverage as permitted by statute. He was entitled to workers' compensation benefits for a workplace injury. The trial court reserved judgment on the award and permitted an interlocutory appeal on that sole issue. The Panel upheld the trial court and remanded for the disposition of the remaining issues.

Moran vs. Fulton Bellows, Inc., Tenn. Workers Comp. Panel, August 17, 2010 (No. E2009-01923-WC-R3-WC). THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee filed a civil action for work related hearing loss 94 days after an impasse was reached at a benefit review conference. The Panel affirmed the trial court's granting of Employer's motion to dismiss on the basis of the 90-day statute of limitations, T.C.A. § 50-6-203(g)(1) (2008).

Park-Pegram, et al. v. Findley & Pegram Company, Inc., Tenn. Workers Comp. Panel, August 17, 2010 (No. W2009-00231-WC-R3-WC). THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Decedent was the president of Employer. He died from injuries sustained in a motorcycle accident which occurred shortly after he had made a bank deposit for the business. His itinerary was unknown, but he was carrying business documents and headed in the direction of a potential future project. The trial court concluded that he was a traveling employee at the time of the accident, and awarded workers' compensation death benefits to his widow along with post-judgment interest.

Employer has appealed. The Panel concluded that Decedent was *not* a traveling employee, but *was* acting in the course of his employment at the time of the accident, so was covered by the workers' compensation statute. The statute does not allow for the award of post-judgment interest, however, so the trial court's award was modified with respect to the interest, but affirmed in all other respects.

Benson vs. Old Republic Insurance Company, et al., Tenn. Workers Comp. Panel, July 28, 2010 (No. E2009-01173-WC-R3-WC). THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

While working for Employer in 2002, Employee developed bilateral carpal tunnel syndrome. Her claim was accepted, she had surgery on her right arm in 2004 and returned to work. She was later terminated for reasons unrelated to her injury. She found new employment in 2006, and in 2007, her treating physician recommended surgery for her left arm. This Employer denied the claim, contending that her subsequent employer was liable for the condition and its effects. The Panel affirmed the trial court's ruling that Employee's condition had been worsened by her later employment. The claim was dismissed.

Kelton v. Bridgestone Americas Holding, Inc. a/k/a Bridgestone/Firestone, Inc., et al. Tenn. Workers Comp. Panel, July 08, 2010 (No. M2009-01026-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee alleged compensable neck and back injuries. Employer denied liability asserting that the injuries were either pre-existing degenerative conditions or were worsened by an intervening auto accident. Dueling doctors' opinions were presented as is usually the case. One physician saw the Employee closer in time to the injury but the other was able to see the spine during the surgery. The authorized treating physician felt that most of the issues in the spine were age, rather than work related. The other physician indicated that, after 32 years working for this employer, it was all work related. The trial court found the neck injury to be compensable, but denied recovery for the alleged lower back injury. It awarded permanent partial disability benefits, temporary total disability benefits, and required the employer to provide medical care for the neck injury. Upon Employer's appeal, the Panel affirmed the trial court's judgment.

Thomison v. Yates Services, LLC, Tenn. Workers Comp. Panel, July 08, 2010 (No. M2009-01556-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee claimed to have suffered two compensable injuries to his left knee. The 2004 injury was accepted as compensable by employer. Treatment included surgery. Employee returned to work and the claim settled. Employer denied liability for an alleged 2006 injury to the same knee, however.

The trial court found that the proof established that the employee suffered a second injury in 2006 and awarded benefits. The Employer appealed.

The Panel concluded that the record lacked medical evidence of causation or of any connection between the 2006 injury and the disability. Although the Employee had sought treatment, he had failed to mention the 2006 injury to either his primary care physician or the physician who performed his independent medical examination (IME), so the Panel reversed the judgment of the trial court and remanded the case.

Allred v. Berkline, LLC, et al., Tenn. Workers Comp. Panel, June 30, 2010, (No. M2009-01236-SC-WCM-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee claimed gradual repetitive motion injuries to his arms and shoulders. The Employer denied liability based on an affirmative defense of misrepresentation of physical condition. During the application process, Employee had not disclosed prior

gradual injuries to his left shoulder and arm from a previous job for which he had settled a workers' compensation disability claim.

The trial court concluded that the employer did not sustain its burden with respect to the misrepresentation defense, so ordered disability benefits. Employer appealed.

The Panel found that the employee's misrepresentation was willful, was relied upon by the employer and was causally related to his present injuries. It reversed the trial court's award of benefits.

Hall v. Am Comp Assurance Corporation, Tenn. Workers Comp. Panel, June 28, 2010 (No.W2009-01461-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.CT. RULE 4.

Employee suffered injuries as a result of repetitive use of his hands and arms in the course of his employment. Employer denied Employee's claim was compensable and claimed any such injury to be as a result of Employee's part time second job. The trial court found that Employee had sustained compensable injuries and awarded benefits.

Employer appeal was denied and the Panel affirmed the trial court's judgment.

Todd v. MTD Consumer Group, et al., Tenn. Workers Comp. Panel, May 13, 2010 (No.W2008-02707-SC-WCM-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.CT. RULE 4.

The employee sustained a compensable injury, was treated and released by the authorized physicians to return to work with no permanent impairment or restrictions. The employee sought further medical treatment on his own including surgery on his back and neck. He filed suit against his employer, and, having had two previous workers' compensation awards, several months later amended his complaint to add the Second Injury Fund as a defendant.

The trial court found that the employee's injury was compensable and awarded benefits. The court apportioned the award between Employer and Second Injury Fund according to T.C.A. § 50-6-208(b), but it then dismissed all claims against the Second Injury Fund based upon the statute of limitations. The Panel affirmed the trial court's judgment.

Myers v. Vanderbilt University, Tenn. Workers Comp. Panel, May 11, 2010 (No. M2008-02009-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.CT. RULE 4.

Employee claimed an occupational disease and filed a claim for benefits. The Employer requested the court order Employee to undergo an independent medical examination in accordance with T.C.A. § 50-6-204(d)(1) (Supp. 2009), but the court refused to so order. The trial court determined that Employee's injury was an occupational disease and awarded benefits. The Employer appealed. The Panel found that the IME should have been ordered so vacated the trial court's judgment and remanded the case for further proceedings.

Day v. Zurich American Insurance, Tenn. Workers Comp. Panel, March 31, 2010 (No. W2009-01349-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee suffered a compensable injury and returned to her pre-injury job, but the holding company which owned her employer had been sold to another entity. The trial court held that she had not had a meaningful return to work and awarded benefits in excess of the statutory lower cap contained in T.C.A. § 50-6-241(d)(1)(A). Employer appealed, but the Panel noted that the trial court had applied existing caselaw and affirmed the judgment.

Resh v. Building Materials Manufacturing Corporation d/b/a GAF Fiberglass Corporation, Tenn. Workers Comp. Panel, March 11, 2010 (No. M2009-00028-SC-WCM-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee filed a claim for hearing loss due to exposure to workplace noise. The trial court found in Employee's favor and awarded benefits. The Employer appealed. The Panel found that the expert medical evidence was not sufficient to establish that Employee's hearing loss was work related, so reversed the trial court's judgment.

Turner v. Bridgestone/Firestone North American Tire, LLC, et al., Tenn. Workers Comp. Panel, March 02, 2010 (No. M2009-00554-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee suffered a compensable injury and alleged that he also sustained a mental injury as a result of chronic pain. The Employer denied the mental injury contending that any such alleged chronic pain was the result of previous injuries or surgeries. The trial court awarded benefits for the mental injury. The employer appealed, but the Panel affirmed the trial court's award.

Brooks v. Paccar, Inc. d/b/a Peterbilt Motors Company, __ S.W. 3d __ Tenn. Workers Comp. Panel, February 10, 2010 (No. M2009-00602-WC-R3-WC)

Voluntary non-suit is not effective until an Order is entered. Tenn. R. Civ. P. 41.01(3).

Employee first filed an action in Chancery Court, later filed a notice of voluntary nonsuit, and then immediately refiled his action in Circuit Court. The employer moved to dismiss the Circuit Court action since the Chancery Court action was *still pending* at the time the Circuit Court action was filed (no judgment had yet been entered). The Circuit Court granted the motion. The Panel upheld that dismissal as did the full court.

Wheeler v. Whirlpool Corporation, Tenn. Workers Comp. Panel, February 02, 2010 (No. M2009-00206-WC-R3-WC) THIS OPINION IS DESIGNATED AS NOT FOR PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY TENN. S.C.T. RULE 4.

Employee had compensable injuries with surgery and returned to work. Her product line was later shut down and she was offered the option of voluntary layoff or a move to another line. She chose voluntary layoff. The trial court found that she had a meaningful return to work, so awarded benefits by applying the lower cap. Employee appealed. The Panel reversed and modified her award so as not to be limited by the lower cap.

ABBREVIATIONS USED THROUGHOUT

ATP = Authorized treating physician
IME = Independent medical examination
M.I.R.R. = Medical Impairment Rating Registry Program
MMI = Maximum Medical Improvement
Panel = The Supreme Court Special Workers' Compensation Appeals Panel = Tenn.
Workers' Comp. Panel
PPD = Permanent partial disability
PTD = Permanent total disability
T.C.A. = Tennessee Code Annotated, also known as the Workers' Compensation Act or
The Workers' Compensation Statute or Law when referring to §§ 50-6-101 et.
seq. = Tenn Code Ann.
Tenn. S.Ct. = Tennessee Supreme Court
TPD = Temporary partial disability
T.R.E., Tenn. Rules of Evid. = Tennessee Rules of Evidence
T. R. Civ. Pro = Tennessee Rules of Civil Procedure
Trial Court – any of the numerous Chancery or Circuit courts which exist in the counties
of the state of Tennessee
TTD = Temporary total disability

Report to the Members of the Consumer and Employee Affairs
Committee of the House and the Commerce, Labor and
Agriculture Committee of the Senate

Advisory Council on Workers' Compensation
David H. Lillard, Jr., Chair

SB 1550 (Ketron)/HB 2030 (Curtiss)

MARCH 24, 2011 MEETING

Representative Curtiss explained that meetings regarding this bill were held as recently as earlier that morning and amendments regarding five issues were in the process of being drafted, although not complete in time for presentation at the Advisory Council's meeting. He went through each section of the amendment for the Council explaining its intent to clear up several items from last year's legislation.

Rep. Curtiss first noted that the Advisory Council had already recommended passage of the language having to do with General Contractors having the authority to select which construction service providers may use their exemptions on a commercial site.

For the second amendment issue, Rep. Curtiss explained that the amendment seeks to change individual exemptions for officers of corporations, LLC, LLP, partnerships or family run businesses from the current 3 to 5 and also to change anywhere "30% ownership" is currently referenced in the statute to "20% ownership" to so accommodate that change.

The third amendment issue, as explained by Rep. Curtiss is that of allowing owners of multiple businesses in the construction field to file for an exemption in each business. He explained that there is no need to make owners buy workers' compensation insurance on themselves. He indicated as well, that the Sponsors were working on some "affiliate" language for this section to prevent individuals from "stacking". He explained that the desired language would prevent an individual from starting up multiple companies and making employees "partners" in same to avoid paying workers' compensation insurance on them.

For the fourth change to the amendment, Rep. Curtiss explained that T.C.A. Section 50-6-902's language about "working with no compensation" was being deleted since, if someone owns the property and is acting as their own prime contractor, there is nobody there to sue, so there's no need to have them buy workers' compensation insurance just because they're drawing a salary from their own company.

The fifth and last item Representative Curtiss addressed was clarification of the section dealing with a sole proprietor or partner working directly for the owner. New language in

the amendment is hopefully making it clear that the reference is to a construction service provider doing jobs that cost less than \$25,000 (below the threshold that requires a contractor's license). This is to clear up any misconception that multiple employees are all exempt because they work for the general contractor. With this item, Representative Curtiss concluded his presentation.

Chairman Lillard sought the will of the Council with respect to whether to take a vote or wait for the actual amendment to be prepared and reviewed. Mr. Pitts suggested going forward with a vote. Mr. Lee supported waiting on viewing the actual amendment before voting. Chairman Lillard looked for a **motion** to the effect of attempting to **schedule an earlier meeting** of the Council to address the amendment when it was ready. Mr. Farmer **so moved** and Mr. Pitts **seconded**. Seeing no objection the Chairman Lillard declared the **motion adopted**.

APRIL 8, 2011 MEETING

Representative Curtiss went through all 13 Sections of the bill briefly again since he had already addressed them in the Council's March 24, 2011 meeting as some clarifications had taken place. Then a few more clarifications by others and comments were made as follows:

Ms. Emily Urban: Legislative attorney. See Section 3 of the bill on page 2. Rep. Curtiss had referred to the determination of the classification. He had discussed the "payroll" and the language now states that it will be the "governing classification" as that term is defined by the rate service organization designated by the Comm. of C & I. I'm not sure if that results from the payroll or not – Mike Shinnick may be able to tell us.

Mr. Mike Shinnick: The governing classification is the classification that produces the most payroll with the exception of 4 classifications and I think previously the way it was worded was it would just be the classification that produces the greatest amount of payroll would determine the way that it would fit in with the contracting group or not. Those 4 classifications exempted are clerical, outside sales, drivers and automobile salesmen, so those are excluded.

Chairman David Lillard: With those clarifications and Rep. Curtiss' discussion of the bill, the current version of it that includes an amendment of it that he has drafted since we met. I will remind the Council that they have already voted on section 2 of the bill and recommended it, but the rest we have not voted on nor commented on as such. So the floor is open for discussion by Council members or questions of the sponsor or others in regard to it.

Mr. Bob Pitts: Rep. Curtiss, do you happen to know with your bill now as proposed, what the intent is with Representative Pitts' is with his bill.

Representative Charles Curtiss: There will be no reason for Rep. Pitts' bill. We've discussed the legislation and this bill will resolve the issue he was seeking to resolve.

Mr. Pitts: That was my assumption, but I thought it was important to get that on the record.

Rep. Curtiss: Yes sir, that's correct, we even had a follow up discussion this week, but that is the agreement.

Mr. Pitts: I think this is a final version of some house cleaning, technical cleanup and reach some accords involving perhaps some gaps in the language from last year. I think

all the departments have worked together to wrap up all the issues. With that, I would **recommend that this Advisory Council go on record in full support of all sections of this legislation.**

Chairman Lillard: motion to recommend for passage. Seconded?

Mr. Jerry Lee: **seconded**

Chair: call the roll of the six voting members on this matter

Ms. Lynn Ivanick: called roll – unanimous in support of recommending passage.

Chair: Alright the motion is **unanimously adopted and the bill will be recommended.**

Overview of Tennessee's Workers' Compensation Market Conditions and Environment

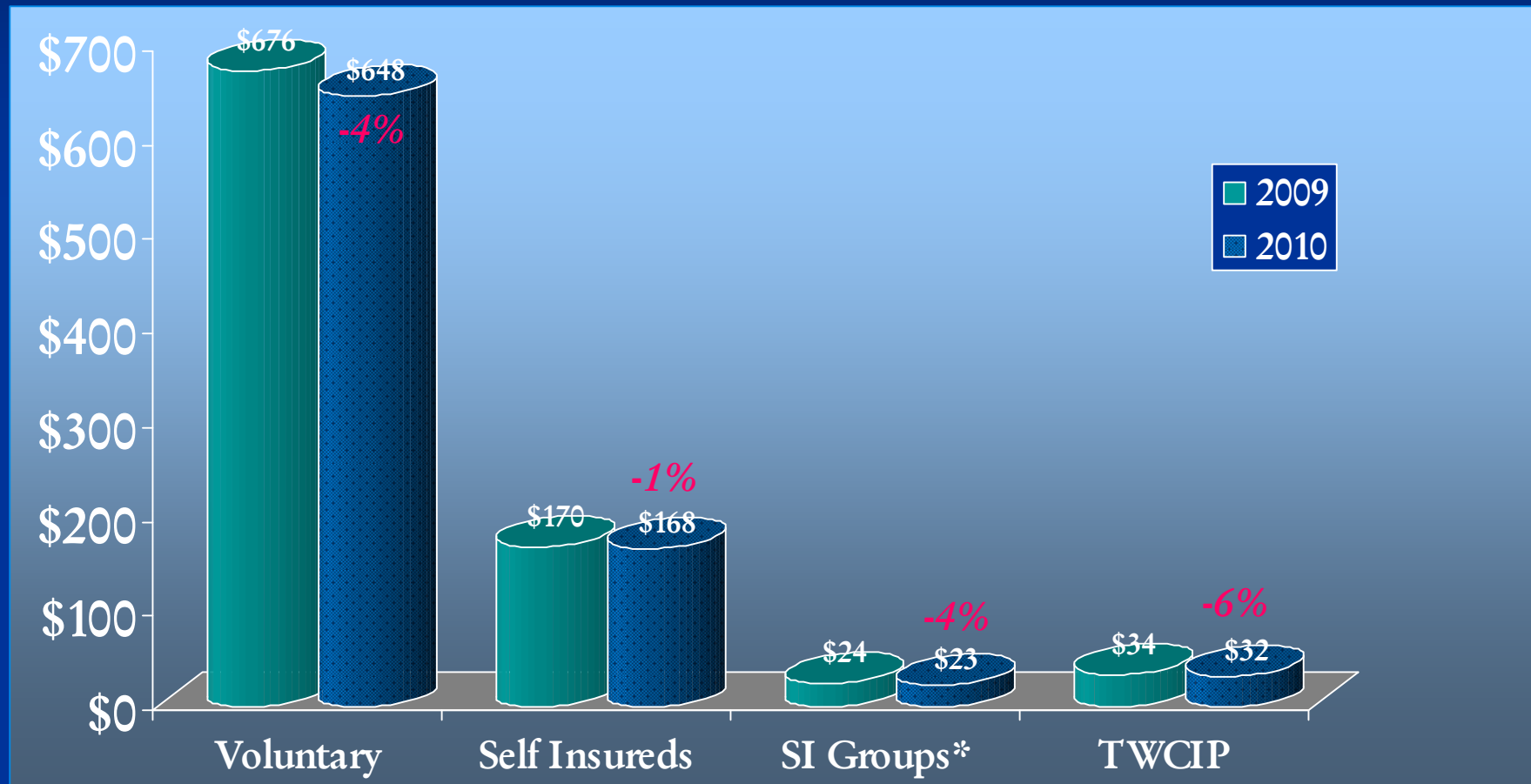
Tennessee Advisory Council on
Workers' Compensation

August 22, 2011

Mike Shinnick, Workers' Compensation Manager
Tennessee Department of Commerce & Insurance

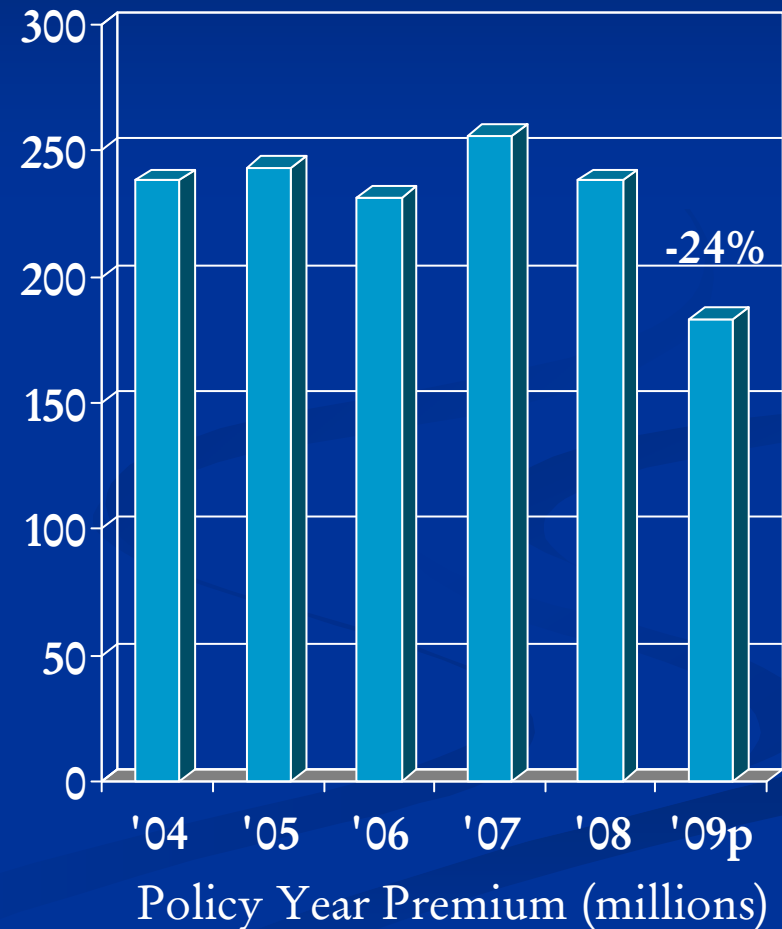
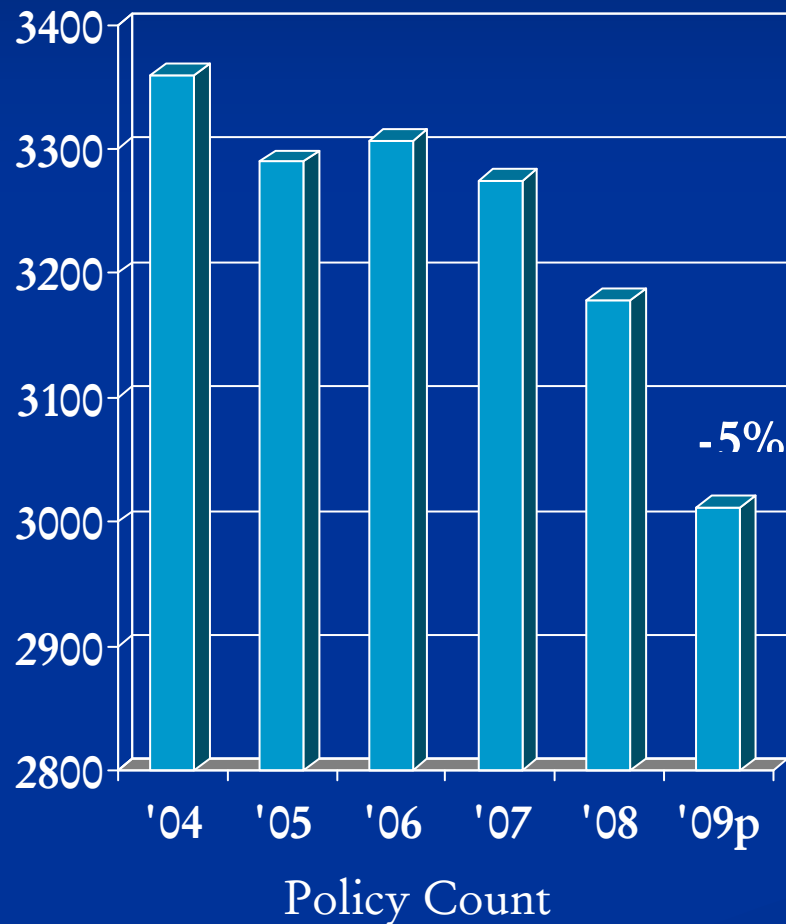
2010 Market Segments

Million in Premiums



* Excluding government sponsored groups, Individual Self Insureds are on an equivalent premium

TN Large Deductibles History



Source: NCCI

National Picture



Workers' Comp Outperforms Overall P&C

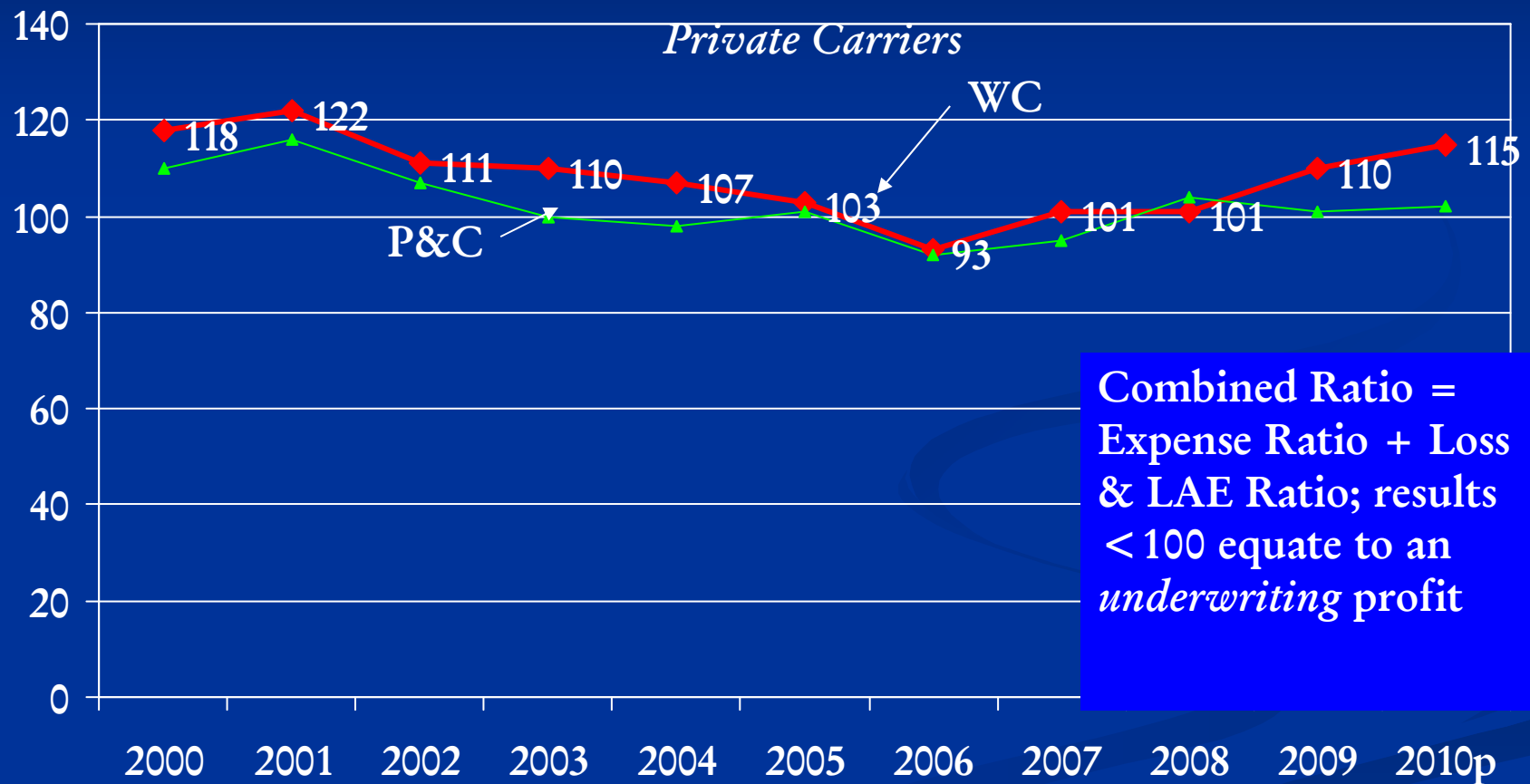
Net Calendar Year Combined Ratio – Private Carriers

Line of Business	2008	2009	2010 preliminary
Personal Auto	100%	101%	101%
Homeowners	117%	105%	107%
Com. Multi Peril	104%	97%	101%
Com. Auto	97%	100%	98%
Workers' Comp	101%	110%	115%
Total P&C Industry	104%	101%	102%

Sources: NCCI for Workers' Compensation; Best Preview & ISO for all other lines

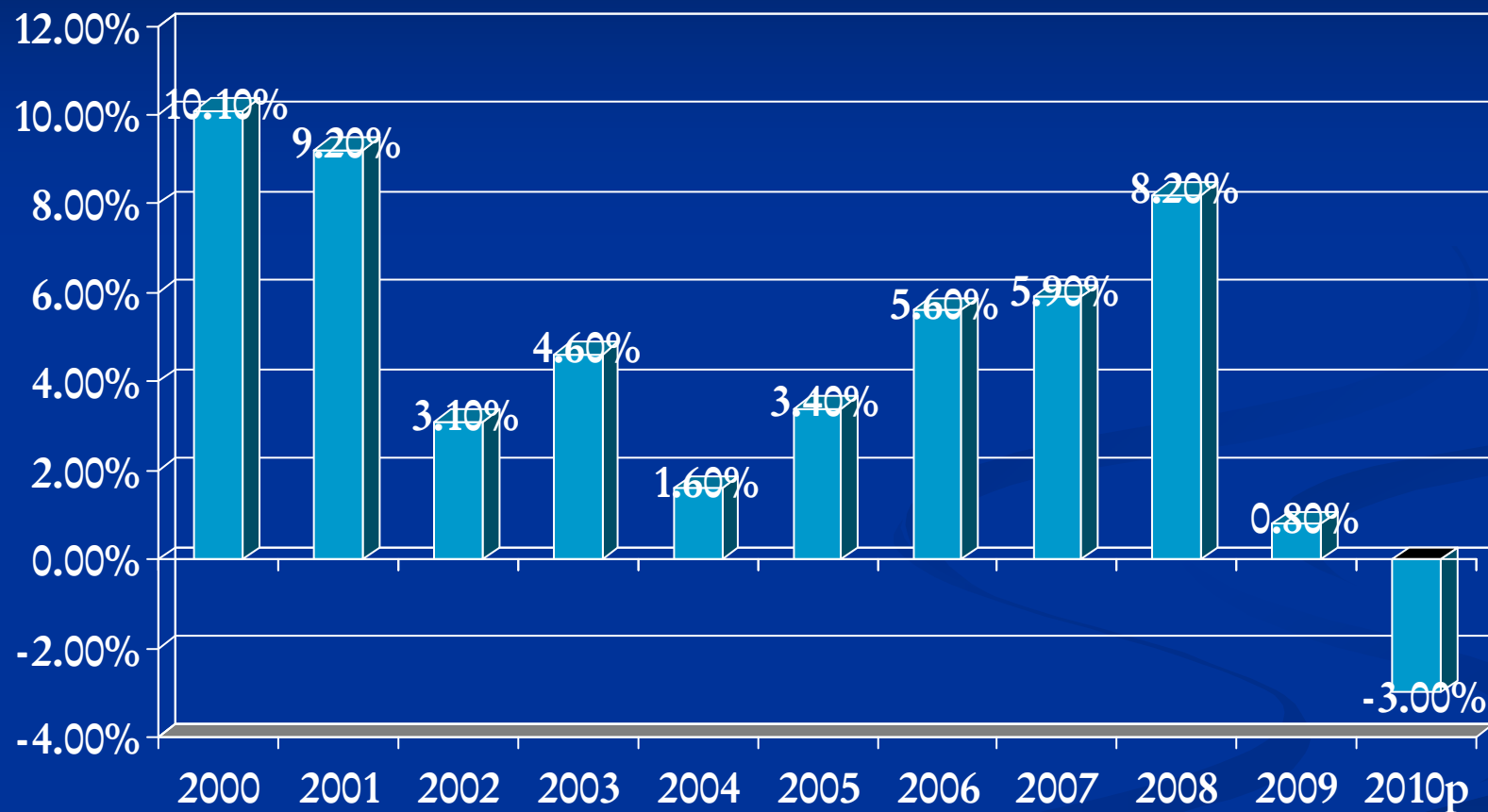
WC and P&C Calendar Year Combined Ratios

Except for 2008, WC Consistently Trails Overall P&C Results,
on Average 6 Points Worse



Source: NCCI (2010 is preliminary)

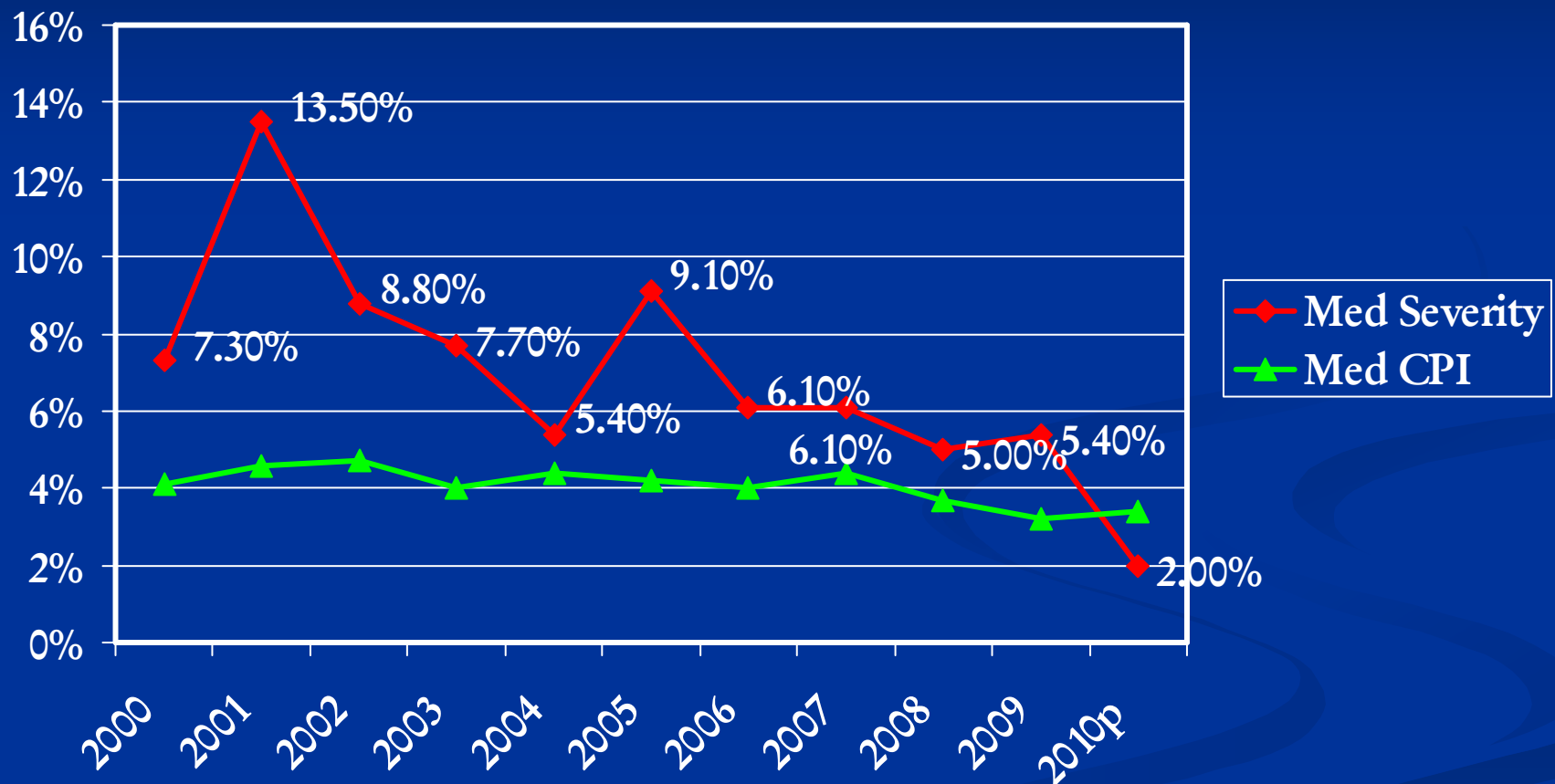
Workers' Compensation Indemnity Claims Cost Decreases in 2010



Source: NCCI (2010 is preliminary)

WC Medical Claim Cost Trends

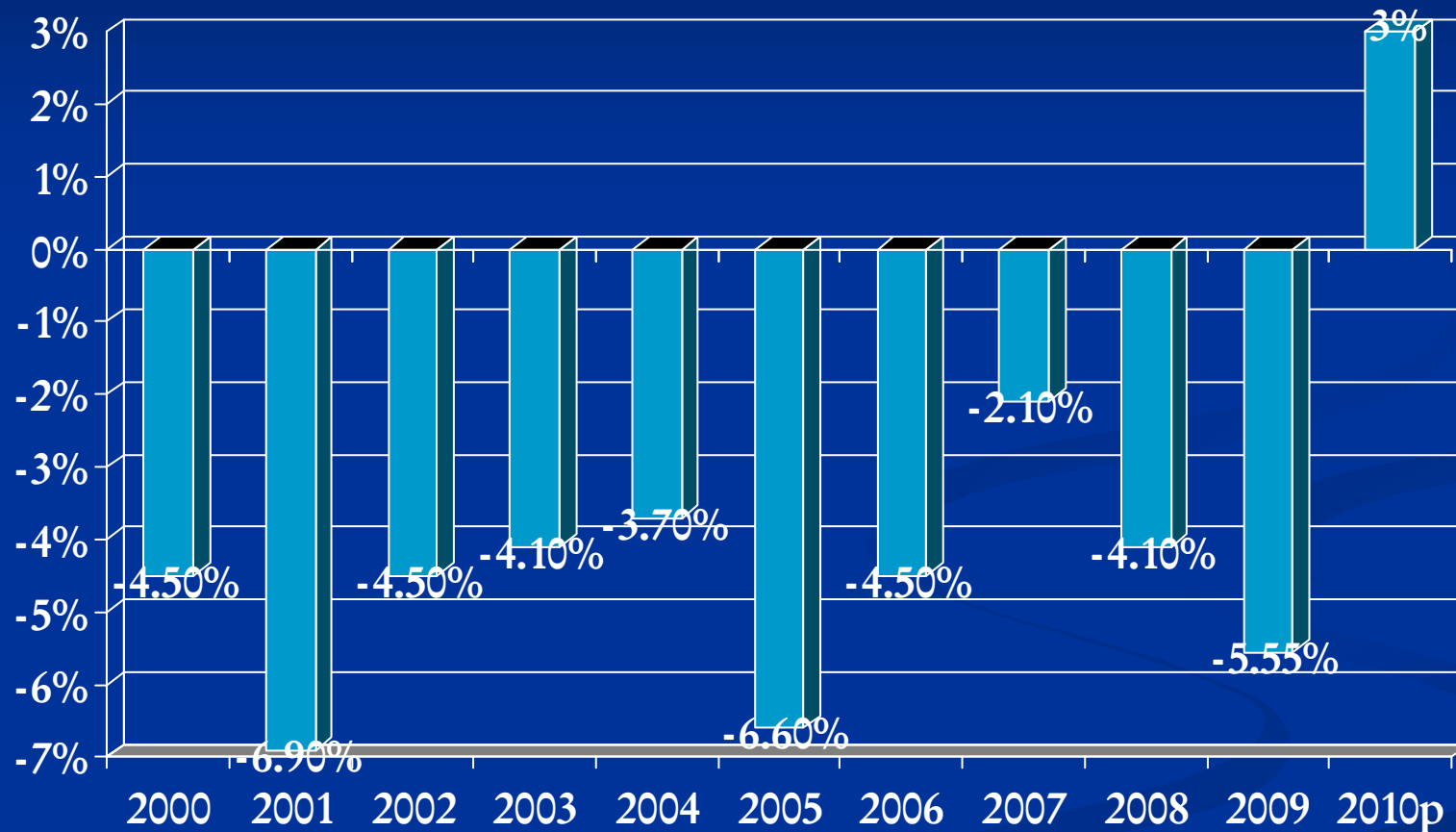
(Lost Time Cases)



Sources: NCCI - Med Severity; Economy.com - Medical CPI

* preliminary

Lost Time Frequency Shifts in 2010

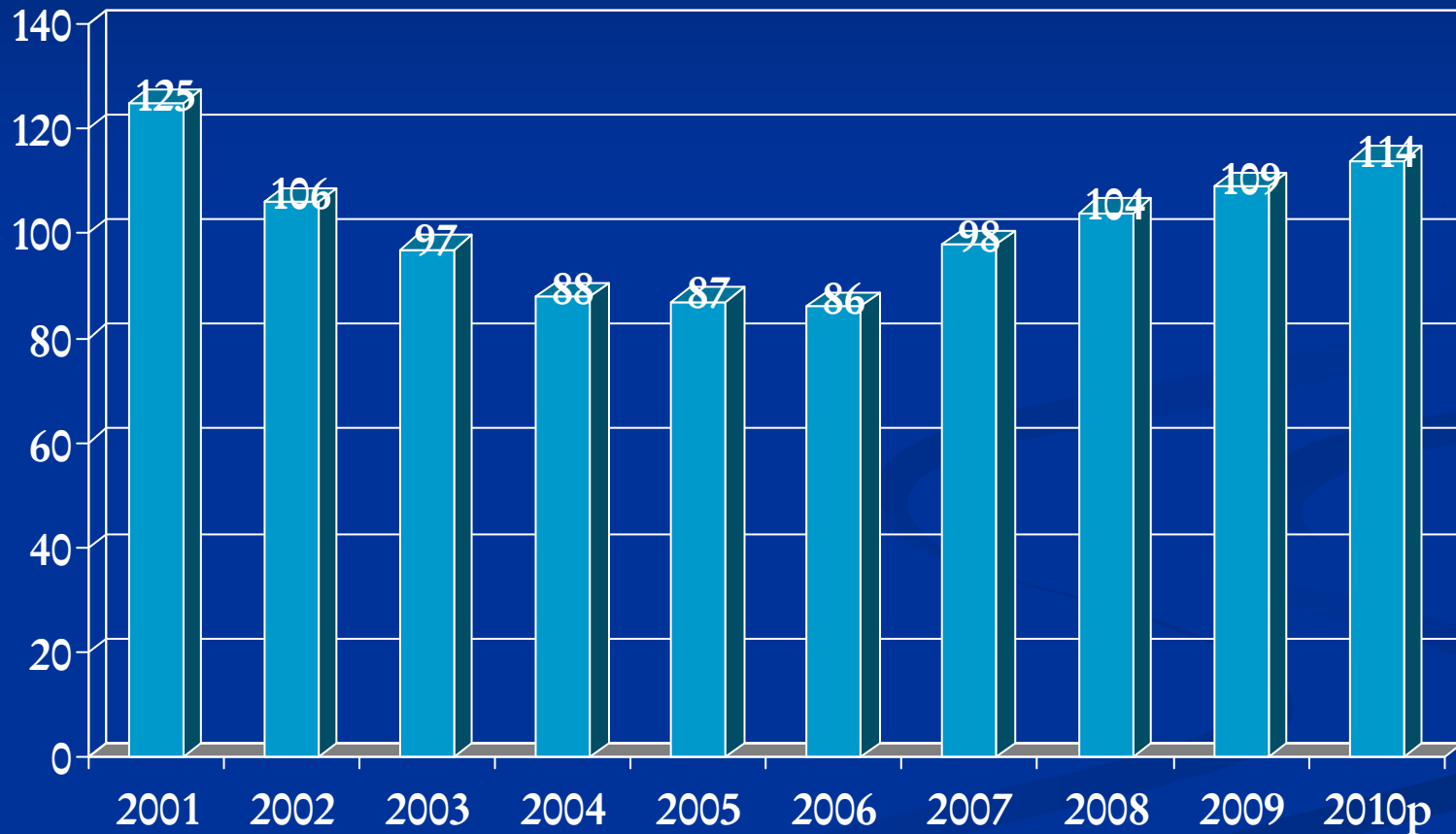


Source: NCCI

* Preliminary; 2010 frequency is adjusted for recessionary factors

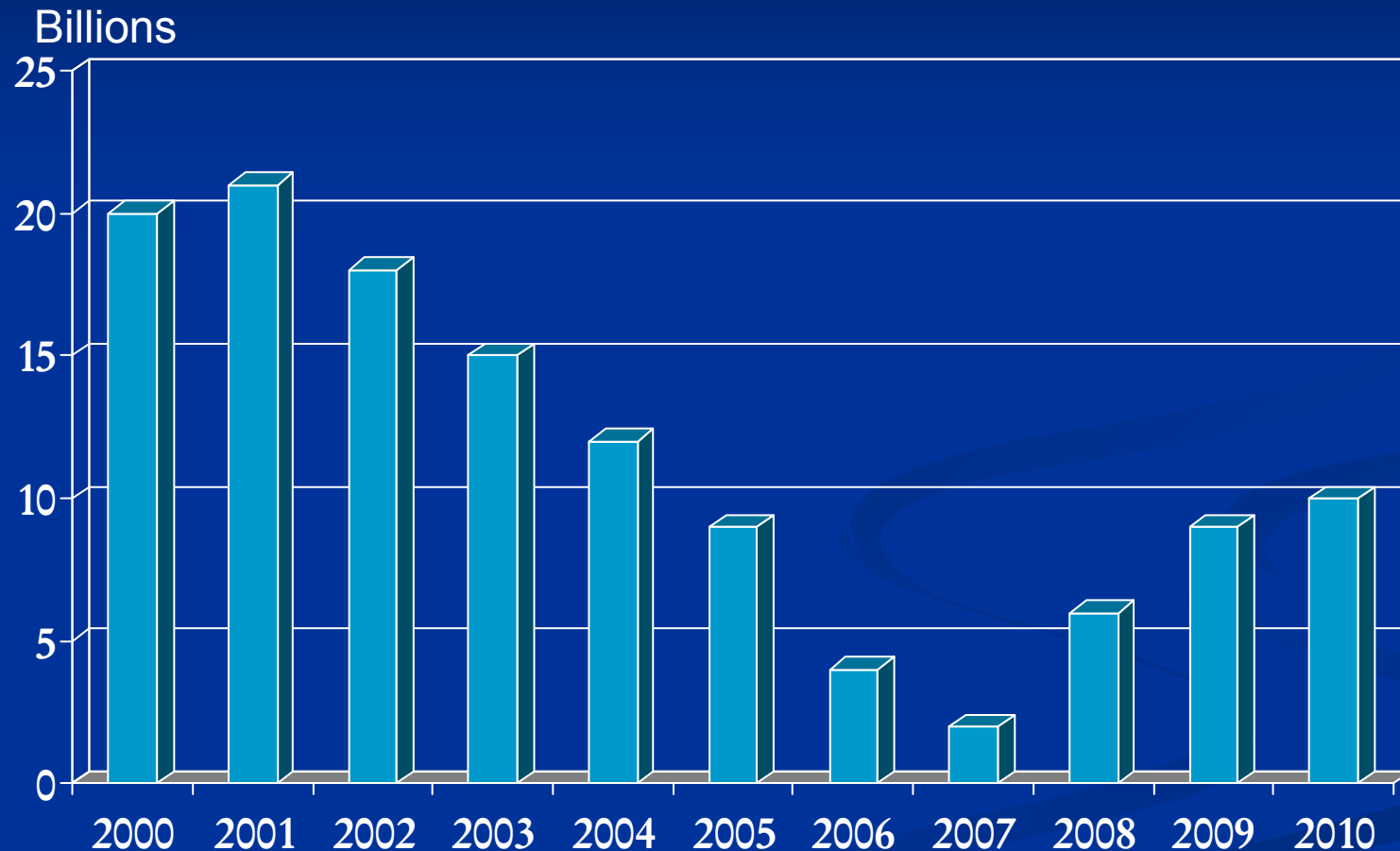
Accident Year Combined Ratio

Workers' Compensation Private Carriers



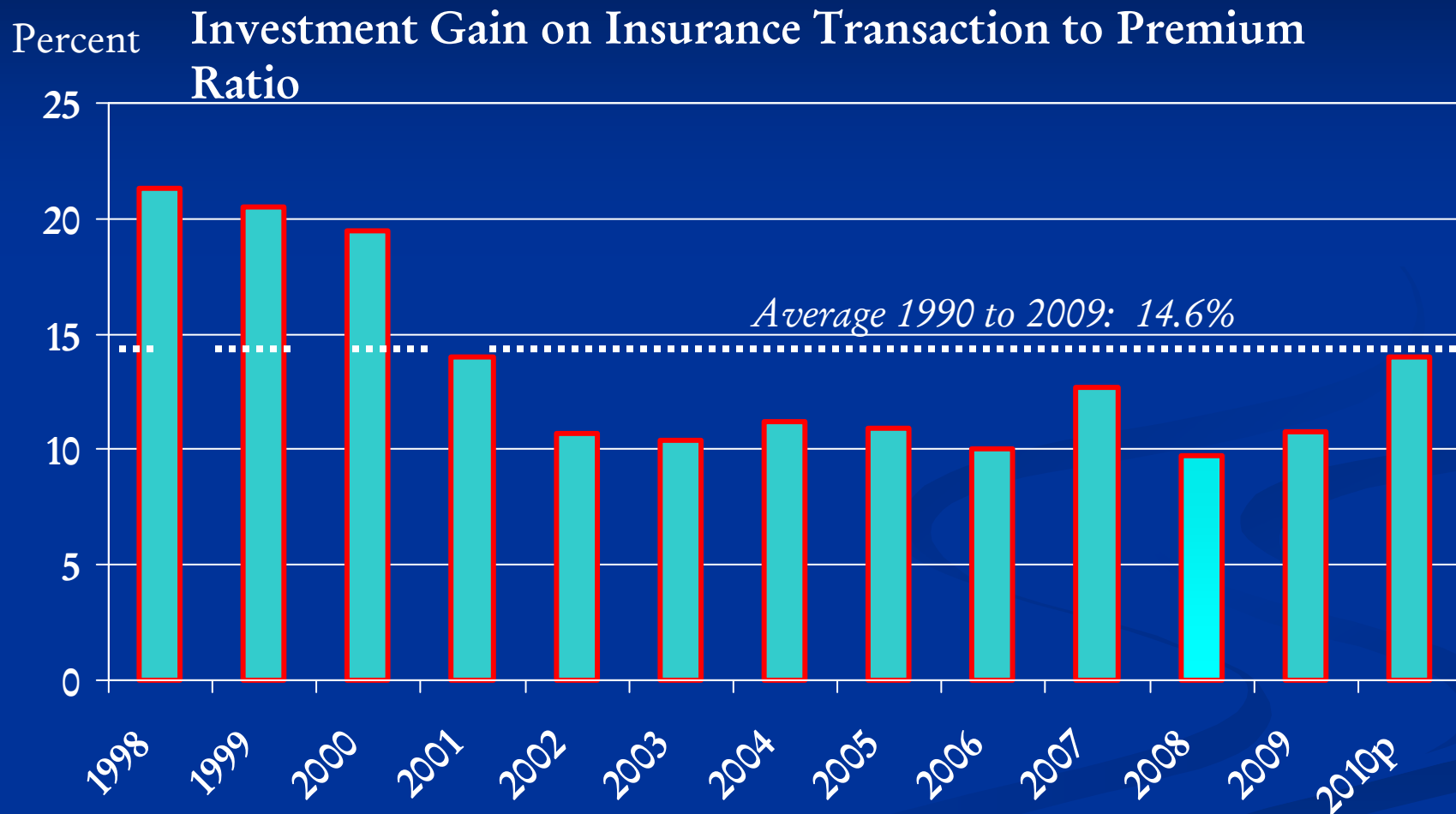
Source: NCCI; 2010 is preliminary

Calendar Year WC Reserve Deficiencies Though Increasing are “Manageable”



Source: NCCI

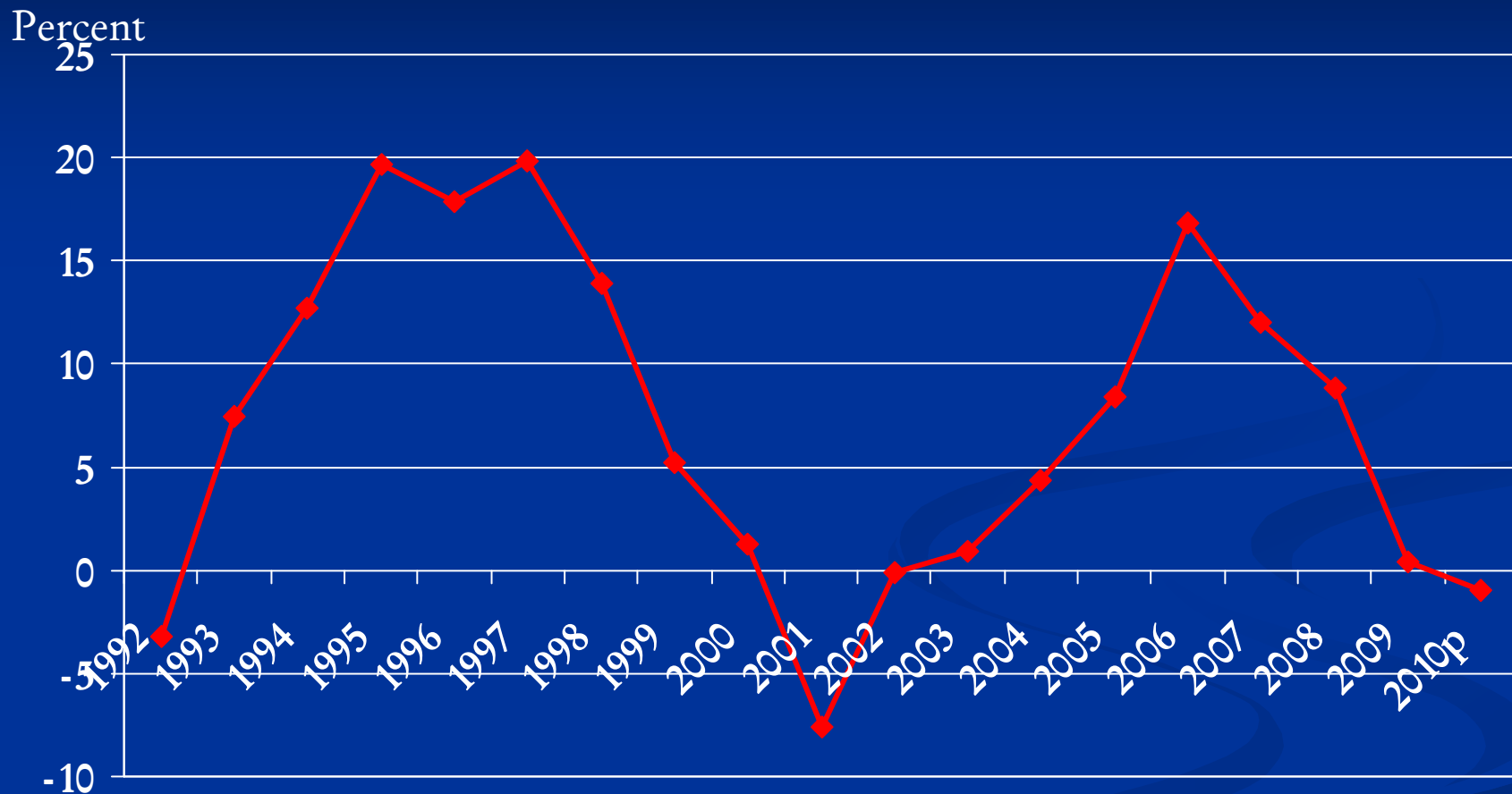
Improved WC Investment Returns in 2010



Sources: A.M. Best/NCCI (2010 is preliminary); Private Carrier results

WC Results – Operating Gain Slips

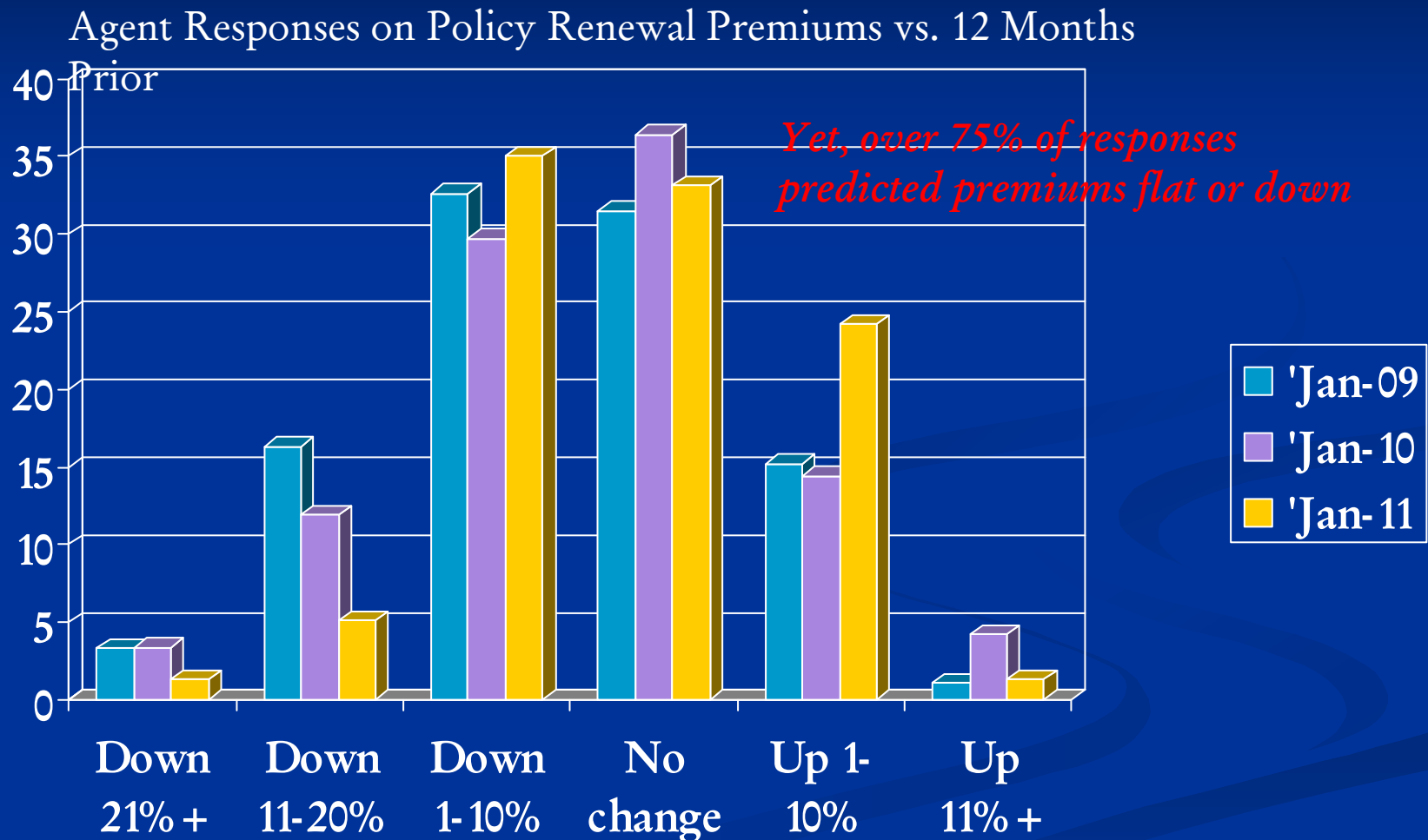
Pre-Tax Operating Gain Ratio – Private Carriers



Source: 1992-2009, Annual Statement Data; 2010 NCCI. Operating Gain equals 1.00 minus (Combined Ratio less Investment Gain on Insurance Transactions and Other Income)

* 2010 is preliminary

According to Goldman Sachs, Pricing Declines Continue to Moderate

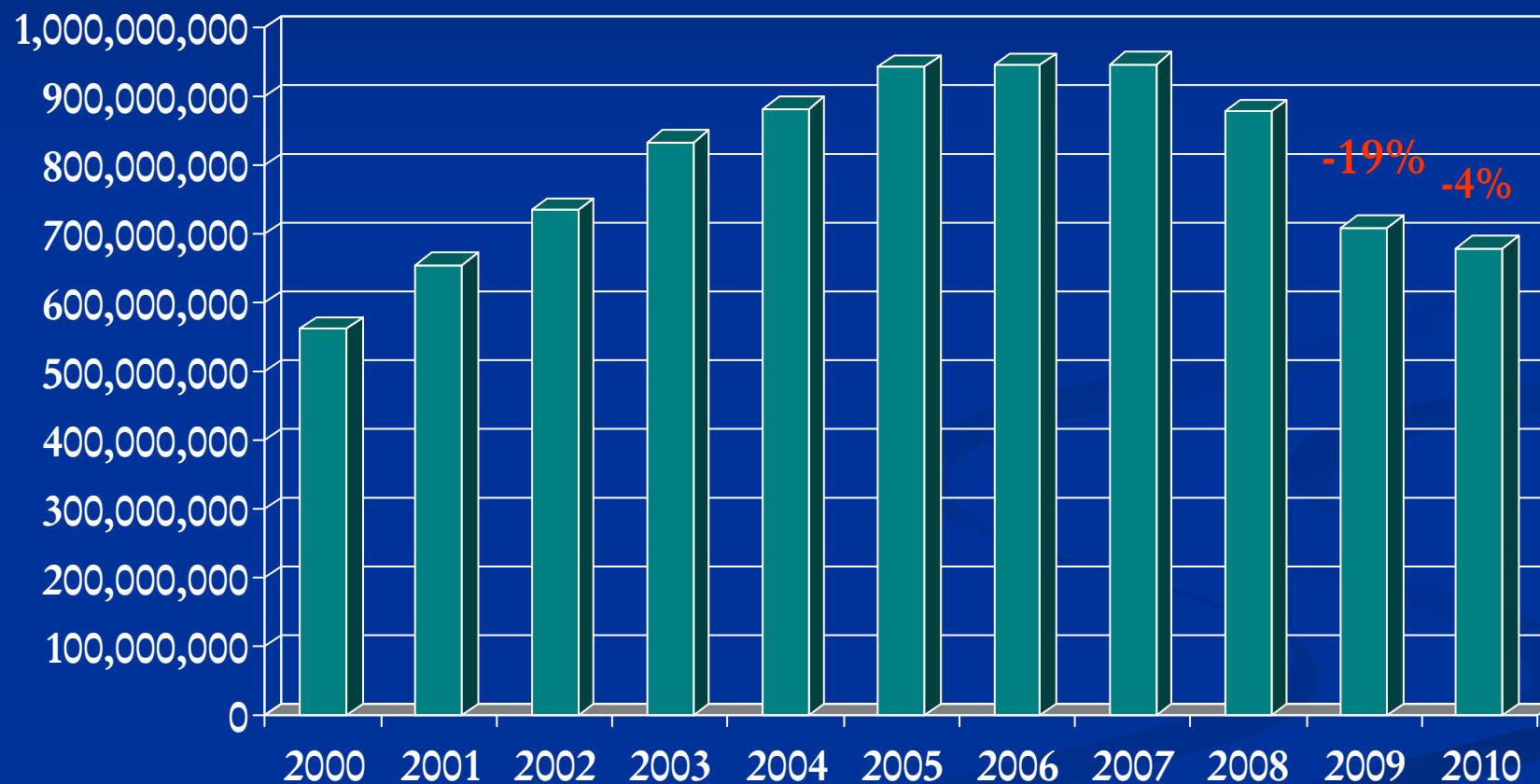


Source: Goldman Sachs Research, Proprietary Survey, "January 2010 Pricing Survey, Insurance: Property & Casualty" (Exhibit 8 Workers' Compensation, Percentage of Respondents)

Tennessee Specific

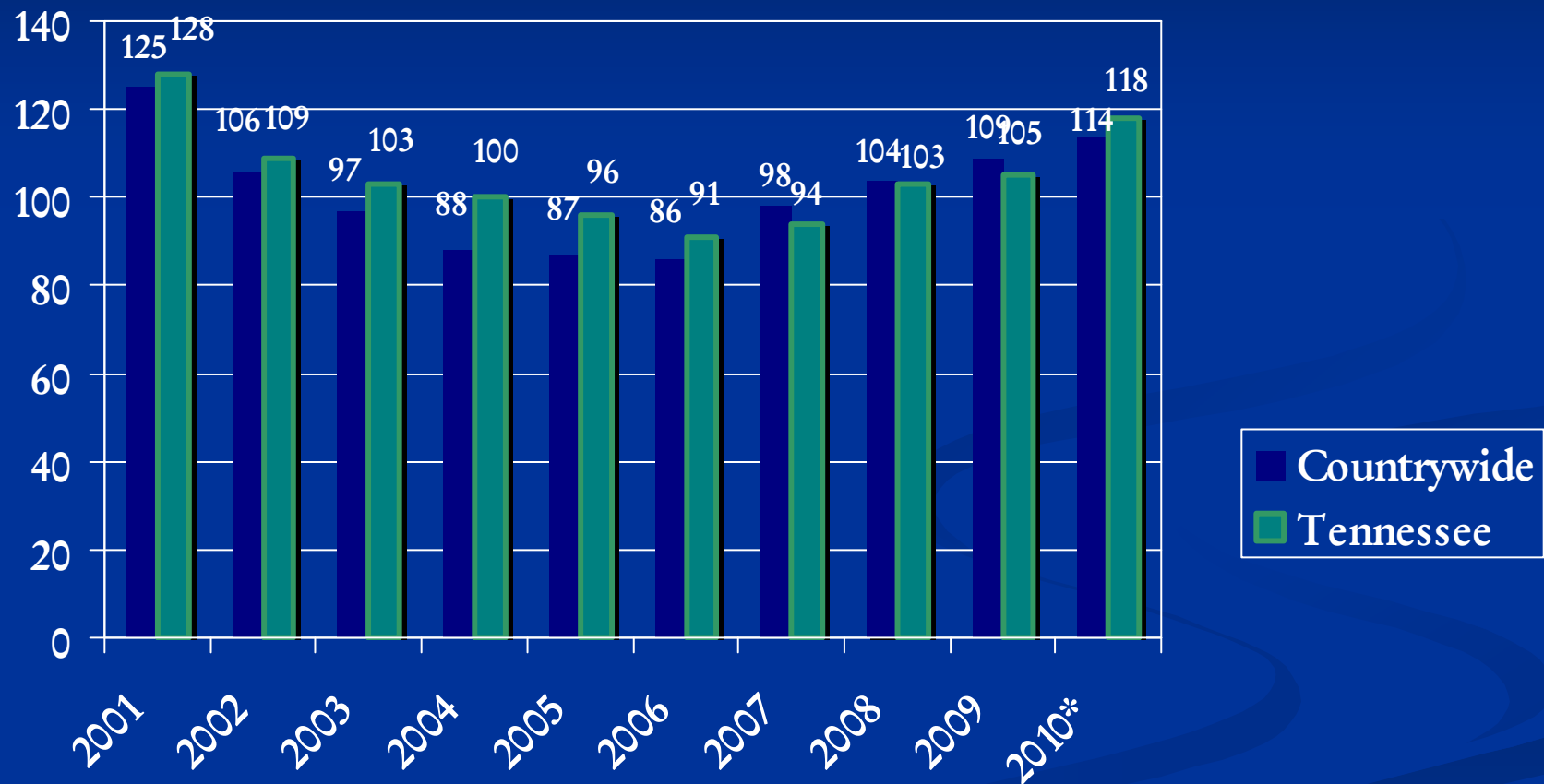


Tennessee Direct Premium Written History



Source: NAIC (Annual Statements)

Accident Year Combined Ratios



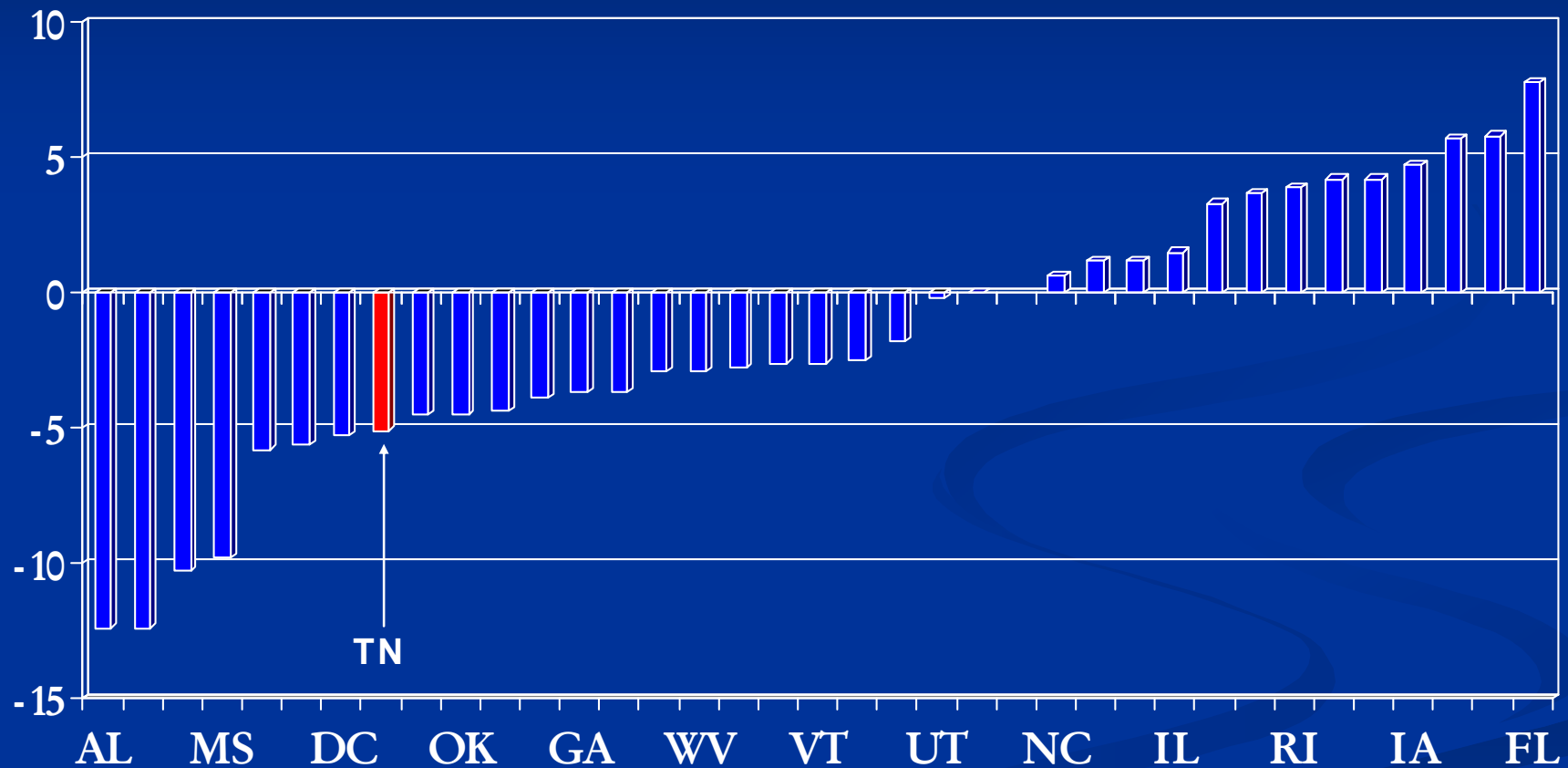
Source: NCCI; 2010 preliminary data

Loss Cost Filing & Final Approvals Since 2004 Reforms Were Implemented

Year Filing Made	NCCI Filed Rate	Advisory Council Recommendation	Commerce & Insurance Approved Rate	Effective Date
2004	-6.3%	-6.3%	-6.3%	9/1/2004
2005	+ 3.9%	+ 3.9%	+ 3.9%	7/1/2005
2005	-6.9%	-6.9%	-6.9% (net -3.3%)	7/1/2005
2006	1.6%	1.6%	1.6%	3/1/2006
2007	1.4%	0%	1.4%	3/1/2007
2007	2.4%	2.4%	2.4%	7/1/2007
2007	-7.2%	-8.6%	-7.2%	3/1/2008
2008	-3.1	-3.1	-3.1	7/1/2008
2008	-3.1	-3.4	-3.1	3/1/2009
2009	-.1	-.1	-.1	3/1/2010
2010	-5.1	-5.3	-5.1	3/1/2011

-18.7% approved since 9/1/04

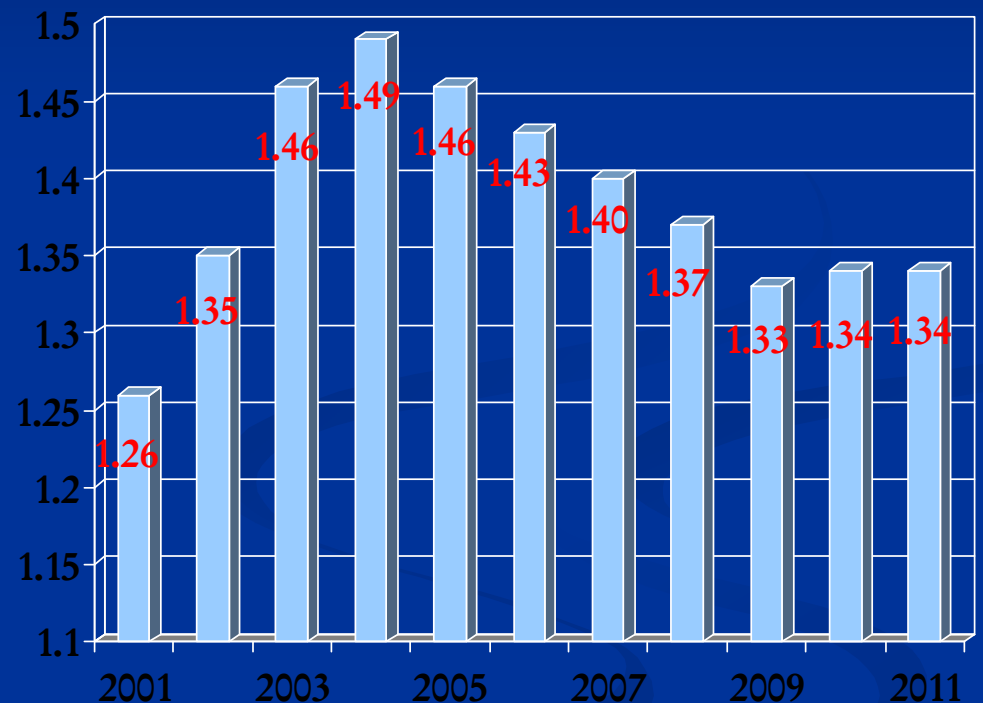
Current NCCI Voluntary Market Filed Rate/Loss Cost Changes



Source: NCCI; states filed through 4/15/2011

Tennessee Voluntary Market Loss Cost Multipliers (LCMs)

Market appears at this stage to have bottomed out. Multipliers are based on prior year premium “weighted average” market shares.



2010 LCM Distribution

(by Direct Premium Written)

Median 1.35



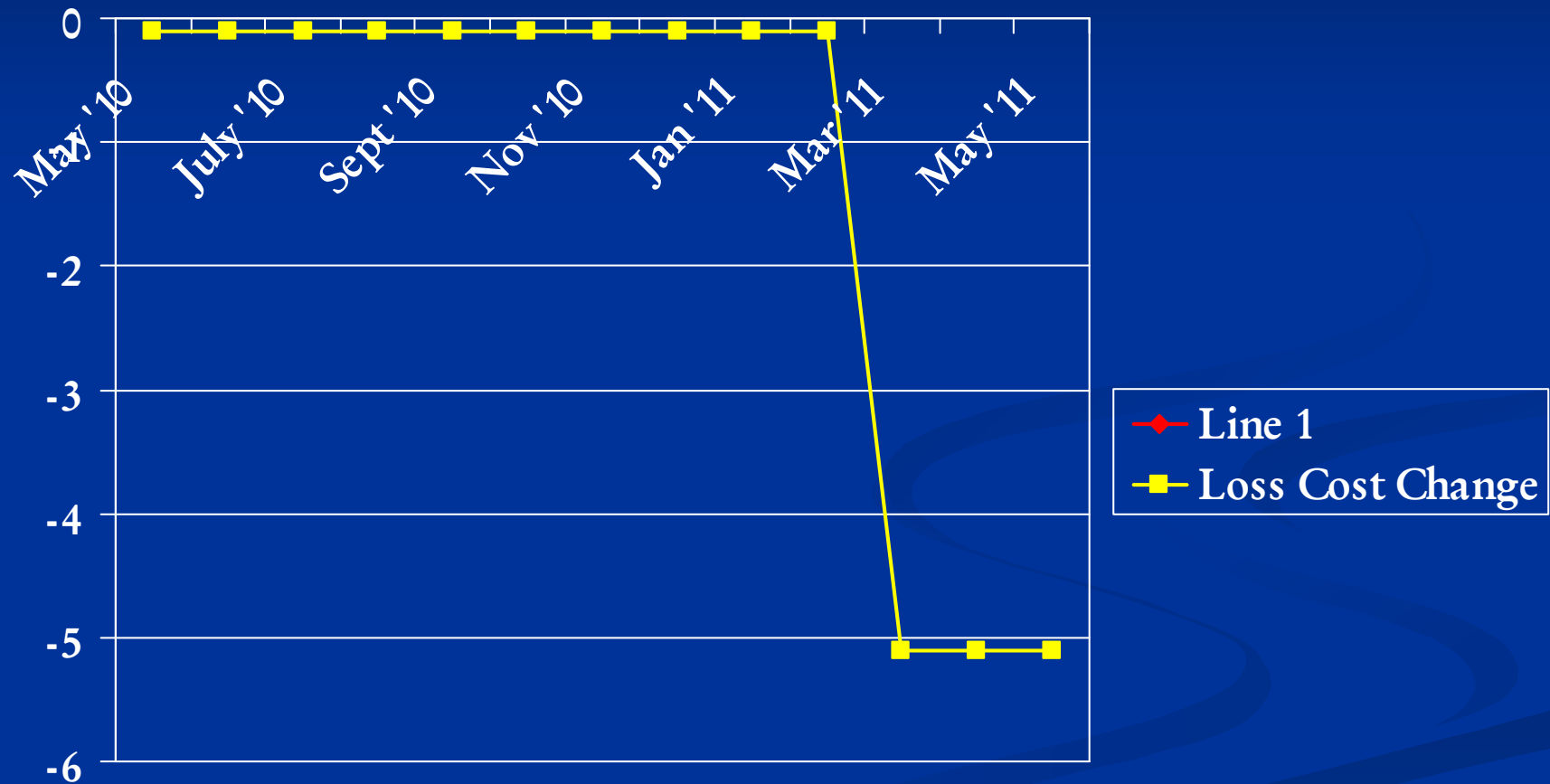
✓ 90% above 1.04

✓ 90% below
1.58

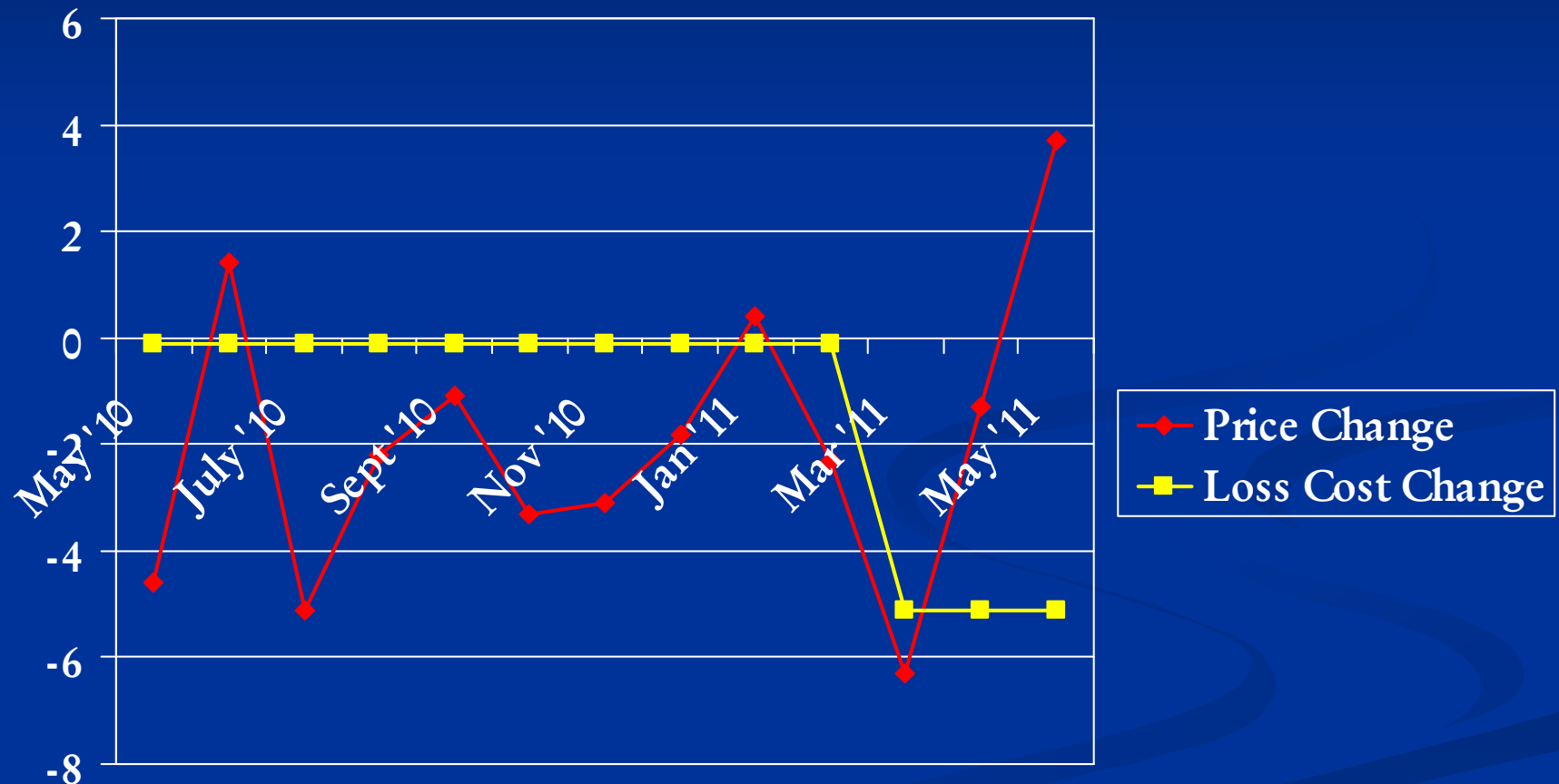
✓ 10% above 1.55 Assigned Risk LCM

A complete listing of lost cost multipliers is posted on Department's website

Loss Cost Change Pricing Element



NCCI TN Price Change Analysis



Source: NCCI; Loss cost change since one year prior

Average reported net rate change between current & prior policy periods

TN WC Premium Tax Revenues

	YE 8/31/07	YE 8/31/08	YE 8/31/09	YE 8/31/10
Self Insurance	\$10,164,858	\$9,662,965	\$8,013,028	\$6,718,164
Insurance	\$32,789,581	\$35,317,758	\$31,791,246	\$25,910,877
Total Premium Tax*	\$42,954,439	\$44,980,723	\$39,804,274	\$32,629,041

Data excludes .4% TOSHA Surcharge

Overview of Voluntary Market Conditions

- Continued profitability decline (cyclical)
- Prices continue to soften into second quarter '10
- Investment climate improved in 2010, though 2011 appears to be on a reversal
- 9 new companies filed LCM's since 7/1/10
- Reinsurance market remains soft, especially for the catastrophe layers.

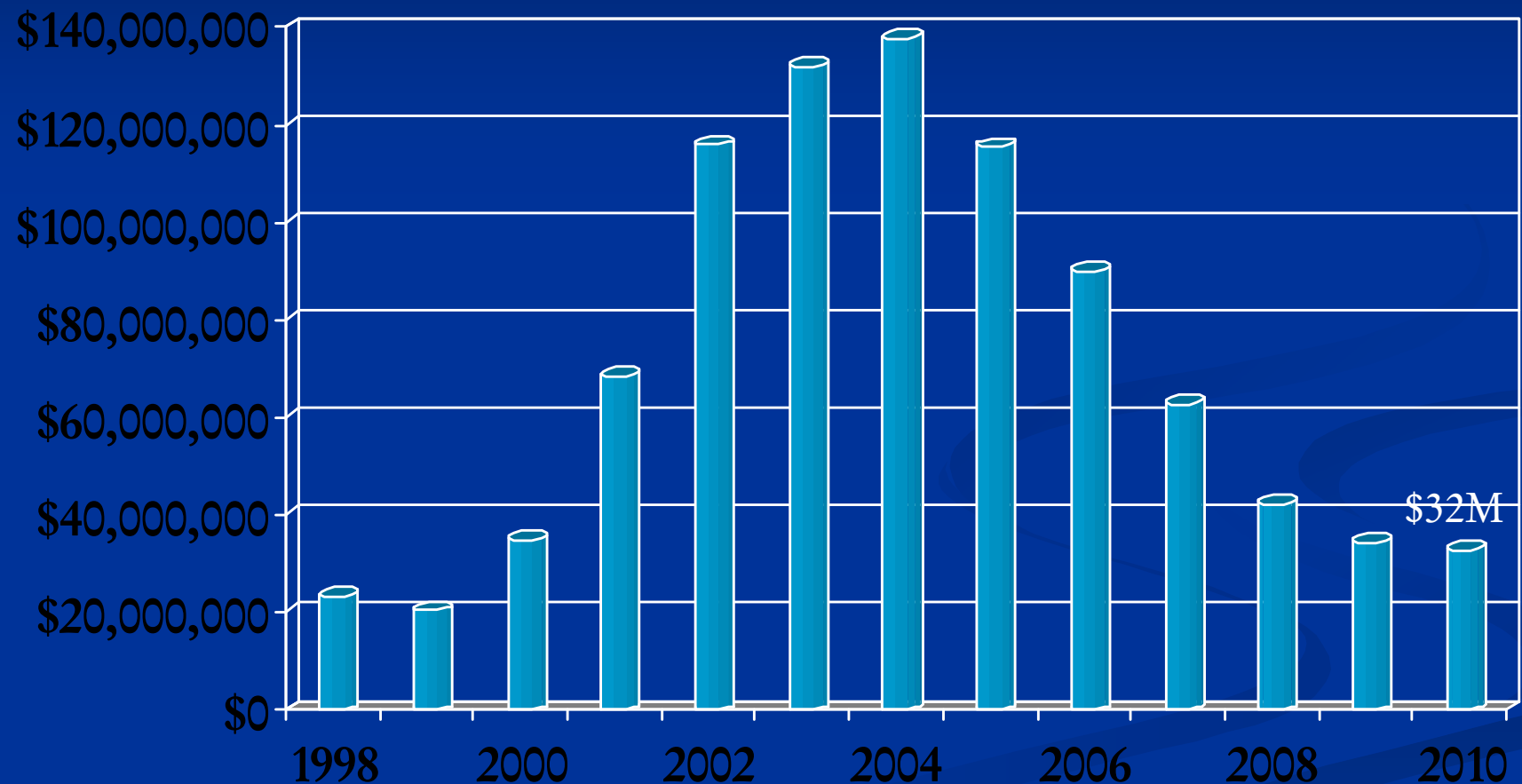
Source of Reinsurance market information: AonBenfield.

TWCIP

“The Assigned Risk Plan”

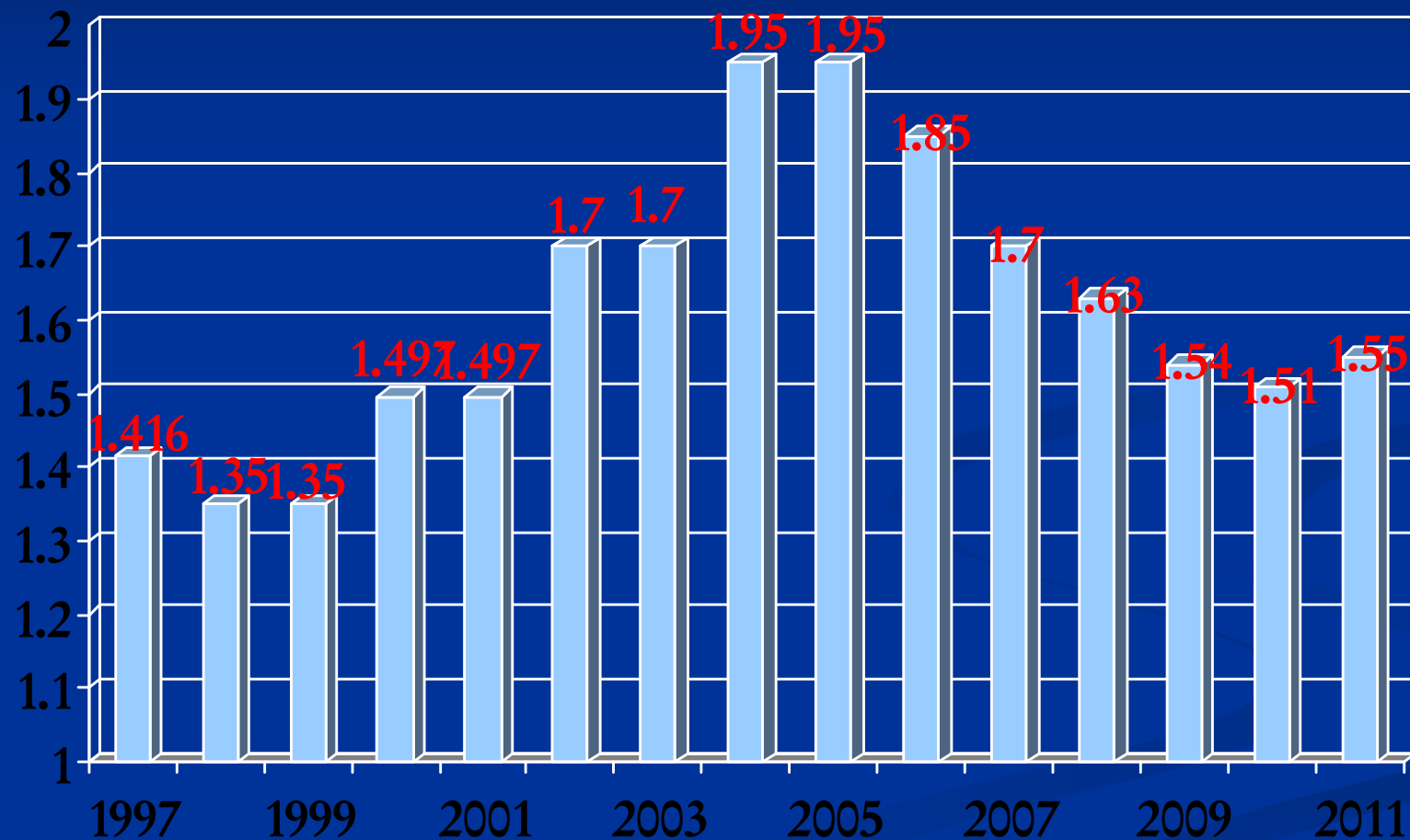


TN Assigned Risk Premium History



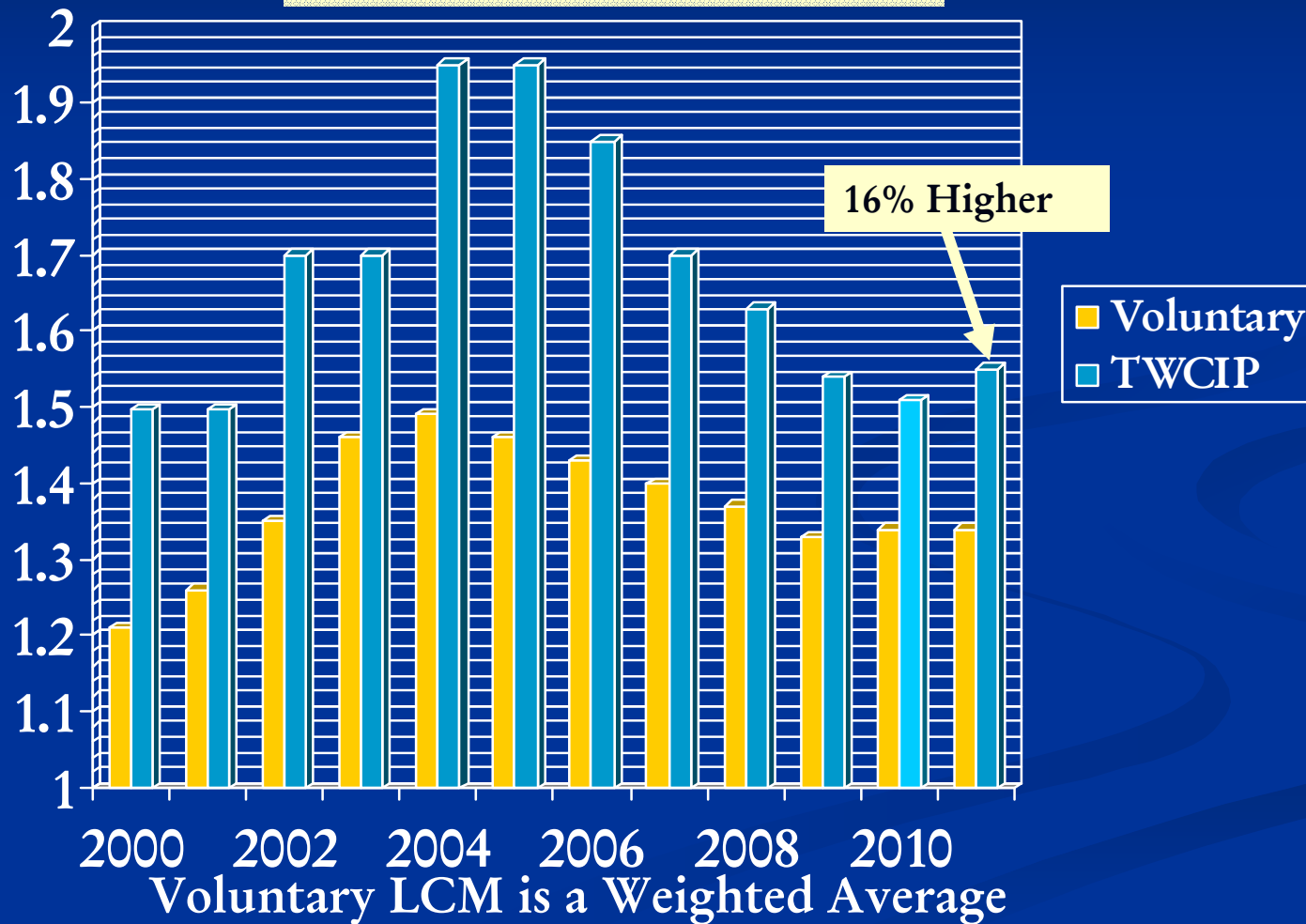
Source: Aon

TN Assigned Risk Loss Cost Multiplier History

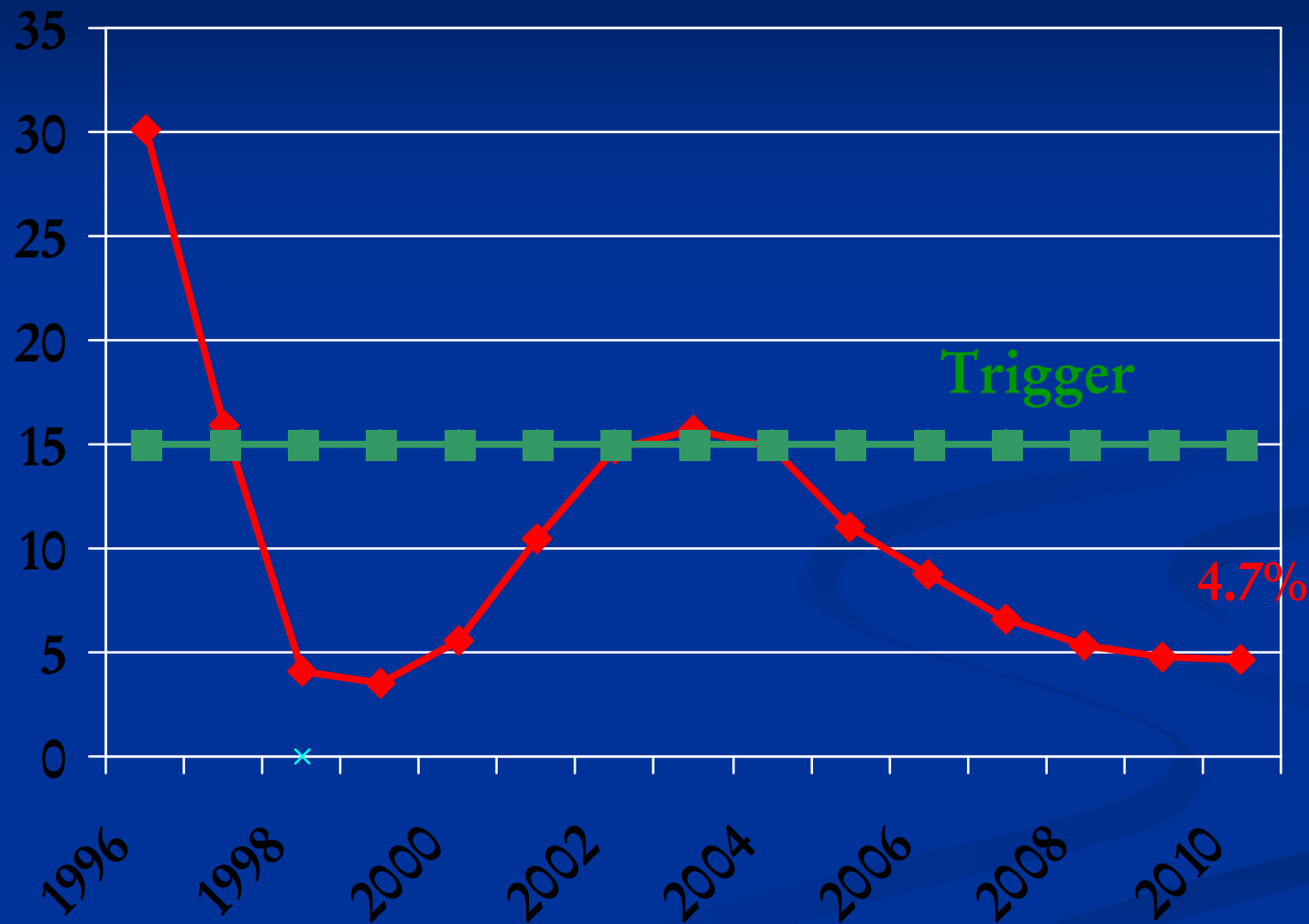


LCM History: Voluntary vs. TWCIP

2010 Weighted Average Differential in 12 Years
TWCIP 23% On Average, Higher

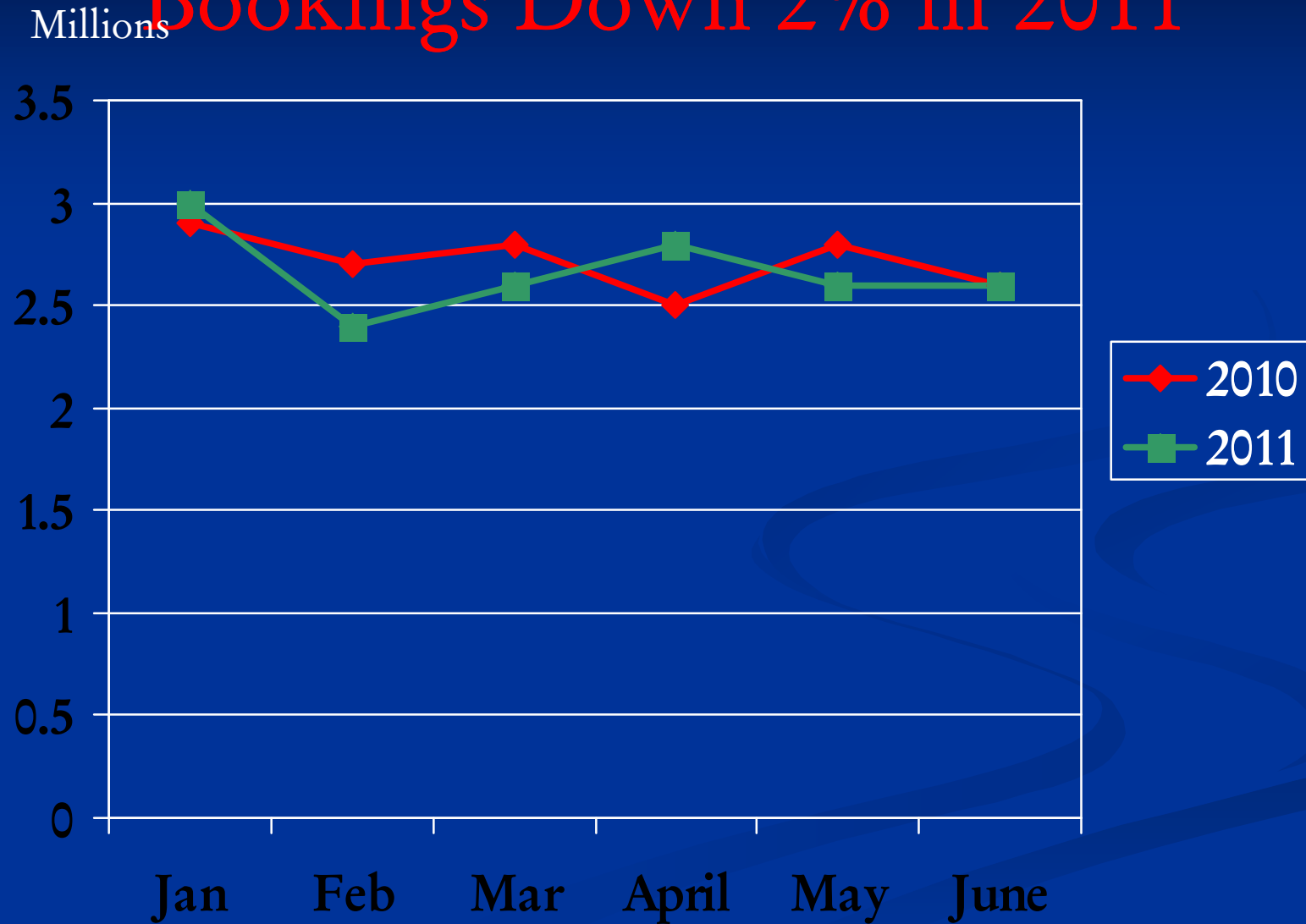


TN Assigned Risk Market Share - NAIC Direct Premium Written

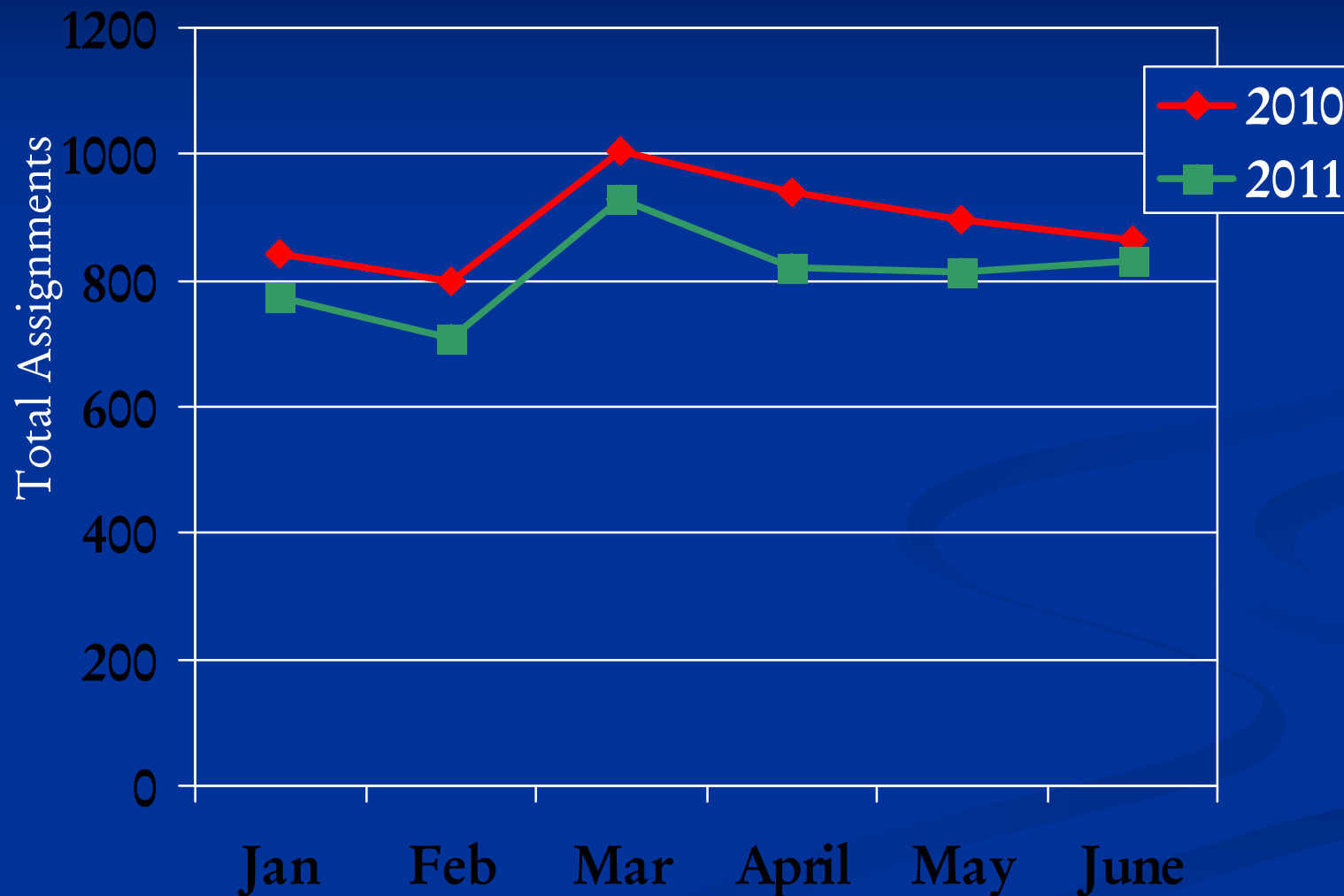


TN Assigned Risk Premium

Bookings Down 2% in 2011



TN Assigned Risk Policy Count Down 9% in 2011



Aon's Actuarial Estimate of Break Even LCM for 3/1/2012

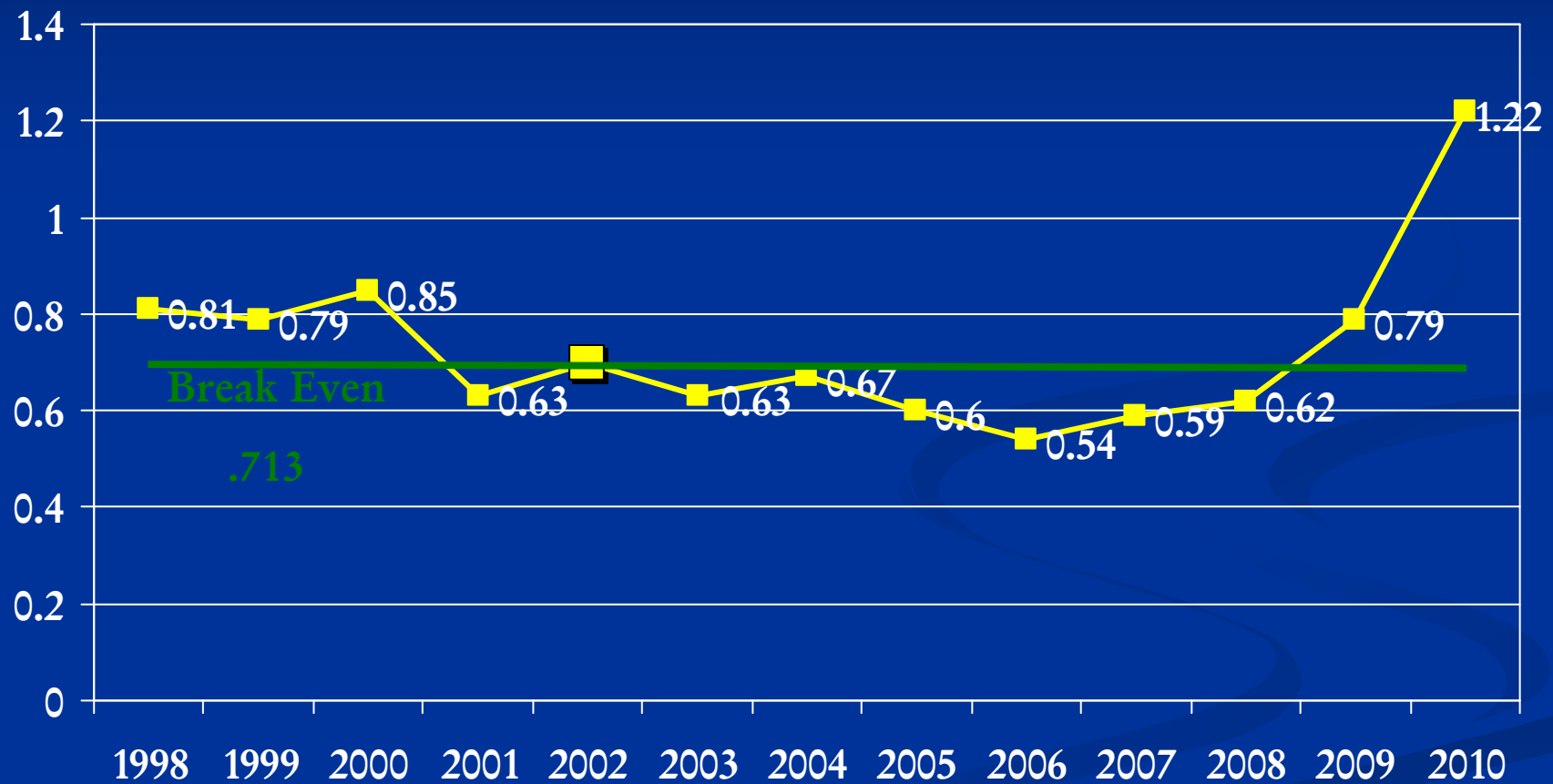
August 15, 2011 - Report Highlights

(Includes both Servicing Carrier & Direct Assignment Carriers loss data)

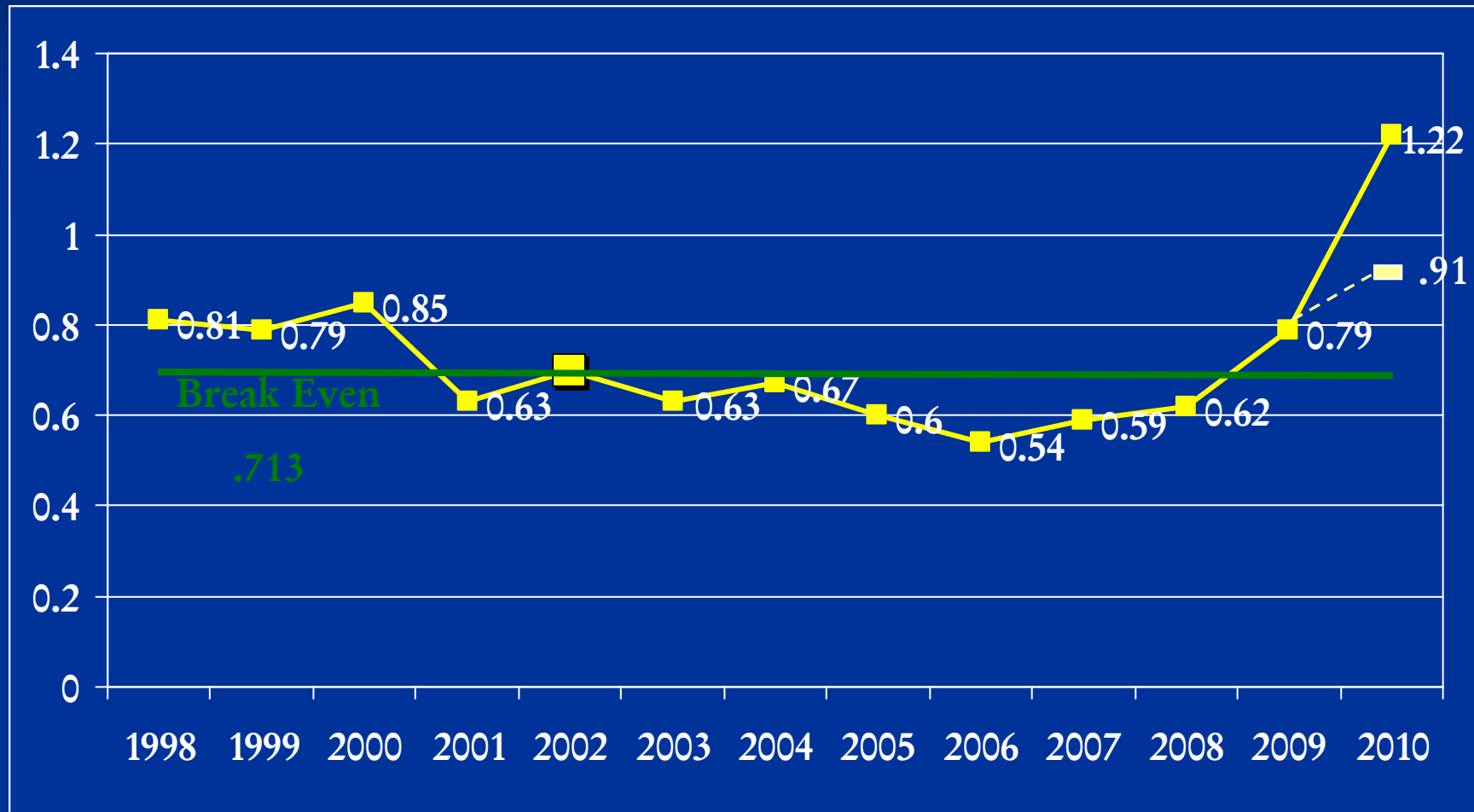


- Projected full impact of adverse development is now 14.8 percent
- Though not shown in Aon's report, the latest 2010 loss ratio for servicing carriers is 125.6%, well ahead of the pace for the early low premium years.
- Provision for uncollected premium, federal income taxes, and other expenses is up slightly to 29.5 points.

TWCIP (Servicing Carriers Only) Loss Ratio Valued 3/31/11 Leveled at 1.55 LCM



TWCIP (Servicing Carriers Only) Loss Ratio Valued 3/31/11 Leveled at 1.55 LCM



2010 impacted by one claim with an incurred amount of \$5.1M;
loss ratio falls to .91 dropping this loss

2010 Self Insurance



List of Self-Insured Groups

Self-Insured Groups	Status
Associated Builders & Contractors of TN	Active
Comptrust AGC of Tennessee	Active
Home Builders Association of TN	Active
TN Automotive Association	Active
TN Forestry Association	Active
TN Health Care Association	Active
TN Road Builders Association	Not Active – Run Off
TN Association of Business Company Owners' Managed Program	Not Active – Run Off
TN Restaurant Association	Not Active
TN Trucking Association Self-Insured Group Trust	Not Active

Overview of Self-Insurance Market (2010)

- Self-Insured Employers – 97
- Number of employees – 238,748
- Total “Premium Equivalent” – \$168 million

- Self-Insured Groups – 6
- Number of employees – 33,555
- Total Premium – \$23 million

Insolvencies

- *Individual carrier data included in this section includes insolvencies over \$1 Million in total losses*



WC Insolvency Data -Valued 6/29/11

(Listed Only Carriers Having Over \$1M Total Unpaid Losses)

Carrier (Liquidation Date)	Total # Claims	Total \$ Amount Paid Claims	Total \$ Unpaid Claims
Reliance (10/01)	1,758	35,339,185	27,157,320
Home Ins. Co. (6/03)	124	2,497,872	2,497,872
Reciprocal of America (6/03)	313	1,491,425	3,233,085
Legion & Villanova (7/03)	1,874	37,564,635	27,161,399
Casualty Reciprocal (8/04)	52	2,849,914	1,424,781
Realm National (6/05)	52	2,592,726	3,997,374
Imperial Casualty (5/10)*	124	1,079,164	2,836,124
Pegasus (8/10)*	6	93,626	1,315,755
Atlantic Mutual (4/11)*	12	3,335	1,394,030
Totals (all since 10/3/01)	4,315	83,511,882	71,017,740

Source: TN Guaranty Association

* New to listing: \$6,722,034 Paid & Unpaid

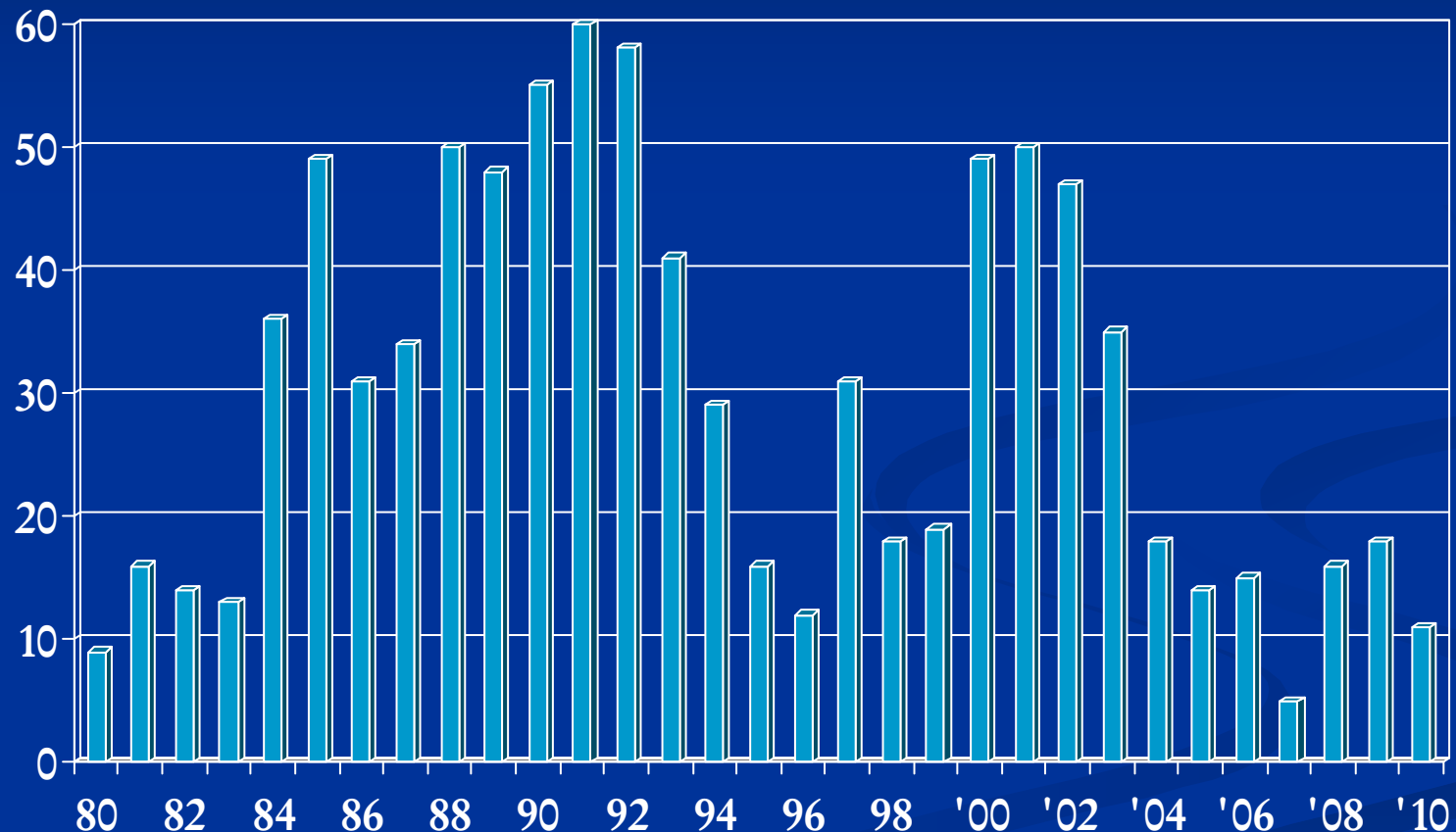
WC Insolvency Data

On the radar screen:

- Kemper Group (IL Domestic)
 - Agreed Orders entered by Commissioner Flowers on July 6, 2005 suspending Kemper Companies licensed in TN.
 - Premium as of December 31, 2009: \$ -2K
 - \$8.3 million in unpaid losses

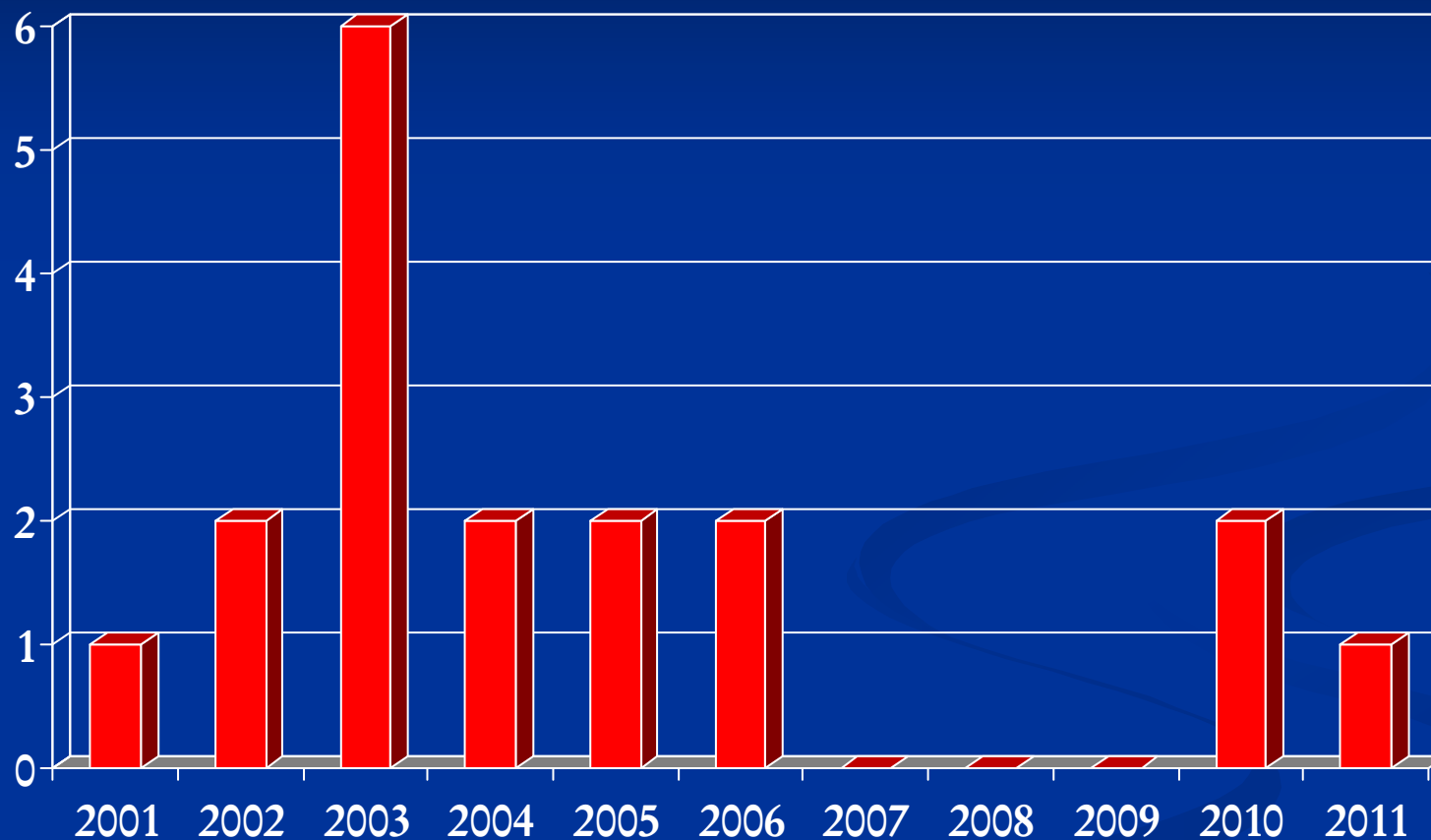
P&C Insurer Impairments: 1980-2010

The number of impairments varies significantly over the P&C insurance cycle, with peaks occurring well into hard markets



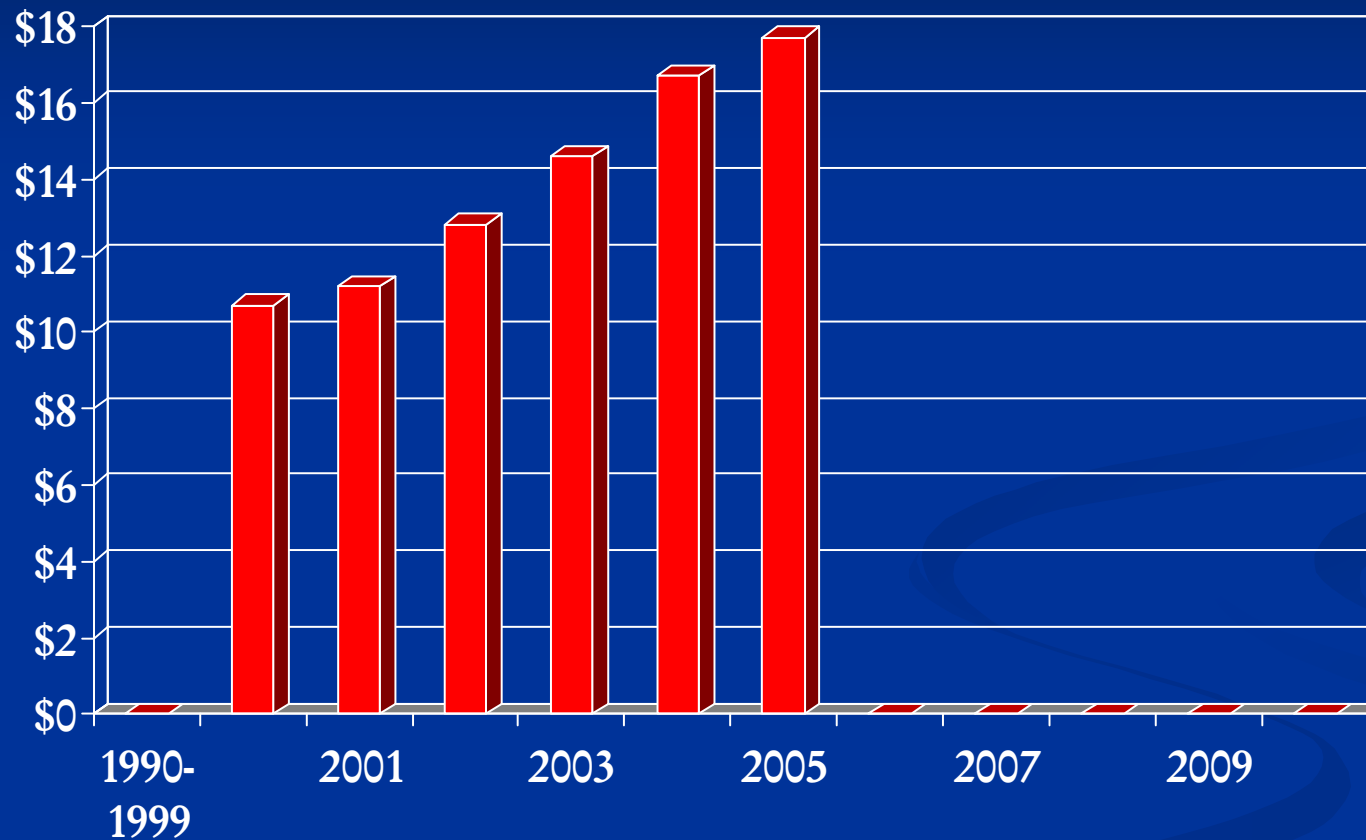
Source: A.M. Best and Insurance Information Institute; 2010 preliminary estimate

Number of WC Carrier Insolvencies Per Year Impacting TN



Source: TN Guaranty Association; 2003 Legion and Villanova are combined
& shown as one

TN Guaranty Fund Assessment History (Millions)



Source: TN Guaranty Association; \$73M assessed since 2001, representing 51% of total losses (see slide 42)

TN Trucking Association Self-Insurance Group Trust

- *Court entered order declaring liquidation complete on May 24, 2011 and closed proceedings.*

TN Restaurant Association Self-Insurance Group Trust

- *Restaurant liquidator has paid all claims in full and all litigation has been settled.*
- *Final procedural administrative tasks necessary for closure of the estate are almost complete.*
- *We will file a motion asking the court for a summary order closing restaurant receivership after these tasks are complete, expected by the end of 2011.*

Overall Market Summary

POSITIVES

- National company failure rate remains moderate
- Smallest TN residual market in 11 years
- Market remains very competitive
- Improved investment returns in 2010

NEGATIVES

- 18 point TN pure underwriting loss - worst “combined ratio” in 9 years
- First frequency increase in 13 years
- NCCI describes today’s market as “deteriorating”
- Latest “Plan” results are poorer than expected

Summary: NCCI Filings Reported Quarterly

Third Quarter 2010	No filings made
Fourth Quarter 2010	No filings made
First Quarter 2011 Item 01-TN-2001 Item RM-01-TN-2011 Item 02-TN-2011 Item RM-02TN-2011 B-1422	Implemented “gross receipts” rule to determine chargeable payroll for non-exempt commercial construction projects effective March 1, 2011 Assigned Risk version of Item 01-TN-2001 Revisions to B-1420 to amend premium determination for each partner and sole proprietor, basing it on the maximum payroll amount for partners and sole proprietors in the construction industry, effective March 1, 2011. Assigned Risk version of Item 02-TN-2011 Revision to Miscellaneous Values payroll determination formula for Taxicab, Athletic Sports or Park (both contact and non-contact) and Carnival, Circus or Amusement Device Operator, adjusting to state average week wage instead of census factor, effective March 1, 2012.
Second Quarter 2011 Item B-1423	Eliminated “ex-medical” coverage rules from the manuals effective March 1, 2012 Withdrawal of “ex-medical” endorsements

Overview of the Tennessee Workers' Compensation Market Conditions and Environment

Copies of Presentation:
tn.gov/commerce/insurance



*State of Tennessee
Advisory Council on Workers' Compensation*

Assigned Risk Plan Data

August 2011

Presented by

Thomas G. Redel, CPCU, ARM, ARe, AIC

Aon Risk Services Central, Inc.

Phone: 816-698-4602

tom.redel@aon.com



Tennessee Workers Compensation Insurance Plan Report: Assignment Summary Comparison

<i>Service Carrier ? Insurance Company</i>		<i>Written Premium 1/1/09 - 12/31/09</i>	<i>Written Premium 1/1/10 -12/31/10</i>	<i>Premium Variance</i>	<i>Policy Variance</i>
Yes					
	Berkley	\$14,481,552.16	\$14,433,951.89	-0.3%	23.4%
	Companion P&C	\$6,585,467.00	\$5,674,855.00	-13.8%	-10.2%
Summary for two Insurance Companies					
Subtotals		\$21,067,019.16	\$20,108,806.89	-4.5%	11.3%
No					-8.2%
	American Guarantee	\$2,003,267.00	\$2,045,564.00	2.1%	56.6%
	Cincinnati	\$479,190.00	\$759,143.00	58.4%	6.7%
	C N A Insurance	\$986,164.00	\$1,170,284.00	18.7%	-100.0%
	Granite State (AIG)	\$3,092,001.00	\$0.00	-100.0%	-17.4%
	Travelers	\$2,799,011.00	\$2,722,354.00	-2.7%	-4.6%
	Hartford	\$2,013,046.00	\$2,020,596.00	0.4%	28.0%
	ACE American Ins Co	\$896,123.00	\$1,366,230.00	52.5%	
Summary for 9 Insurance Companies					
Subtotals		\$12,268,802.00	\$10,084,171.00	-17.8%	-17.7%
Grand Totals		\$33,335,821.16	\$30,192,977.89	-9.4%	2.2%



*Tennessee Workers Compensation Insurance Plan
Report: Premium Size Comparison*

Report: Premium Size Comparison

<i>Low Premium</i>	<i>High Premium</i>	<i>Policy Count 1/1/09-12/31/09</i>	<i>Policy Count 1/1/10-12/31/10</i>	<i>Policy Variance</i>	<i>Est. Annual Premium 1/1/09 to 12/31/09</i>	<i>Est. Annual Premium 1/1/10 to 12/31/10</i>	<i>Premium Variance</i>
\$0.00	\$2,499.99	7,636	7,982	4.5%	\$7,185,458.16	\$7,229,333.67	0.6%
\$2,500.00	\$4,999.99	984	994	1.0%	\$3,447,639.00	\$3,459,380.22	0.3%
\$5,000.00	\$9,999.99	655	562	-14.2%	\$4,525,439.00	\$3,822,688.00	-15.5%
\$10,000.00	\$24,999.99	436	388	-11.0%	\$6,574,876.00	\$5,738,862.00	-12.7%
\$25,000.00	\$49,999.99	97	102	5.2%	\$3,243,216.00	\$3,488,994.00	7.6%
\$50,000.00	\$99,999.99	43	39	-9.3%	\$3,122,990.00	\$2,772,292.00	-11.2%
\$100,000.00	\$249,999.99	13	14	7.7%	\$1,833,048.00	\$2,016,687.00	10.0%
\$250,000.00	\$499,999.99	3	5	66.7%	\$933,711.00	\$1,664,741.00	78.3%
\$500,000.00	and up	2	0	-100.0%	\$2,469,444.00	\$0.00	-100.0%
<i>Totals</i>		9,869	10,086	2.2%	\$33,335,821.16	\$30,192,977.89	-9.4%



Tennessee Workers Compensation Insurance Plan

Report: Classifications Rank -- 1 to 20

For Effective Date from 1/1/2009 to 12/31/2009

<i>By Policy Count</i>					
<i>Rank '09</i>	<i>Rank '08</i>	<i>Code</i>	<i>Description</i>	<i>Policy Count</i>	<i>Premium</i>
1	1	5645	Carpentry (one or two family dwellings)	1384	\$1,952,689.00
2	2	5437	Carpentry (cabinets or interior trim)	541	\$685,048.00
3	3	5474	Painting or Paperhanging	463	\$1,238,563.00
4	5	5551	Roofing	434	\$1,362,349.00
5	4	5403	Carpentry NOC	405	\$728,700.00
6	7	9014	Buildings - Operations by Contractors	300	\$435,742.00
7	9	8810	Clerical	285	\$837,475.00
8	10	6217	Excavation & Drivers	257	\$607,597.00
9	8	5022	Masonry NOC	253	\$460,352.00
10	14	5606	Contractors - Executive Supervisor	249	\$390,180.00
11	6	5445	Wallboard Installation Within Buildings	246	\$374,200.00
12	11	5478	Carpet, Linoleum, Vinyl, Asphalt, or Rubber	220	\$237,844.00
13	13	0042	Landscape Gardening & Drivers	209	\$449,453.00
14	12	5190	Electrical Wiring-Wtihin Buildings & Drivers	208	\$274,986.00
15	17	7219	Trucking NOC	176	\$1,126,563.00
16	24	7711	Firefighters-Volunteer and Drivers	154	\$354,085.00
17	28	8835	Nursing-Home Health, Public and Traveling	149	\$756,856.00
18	18	8742	Salespersons, Collectors Or Messengers	139	\$234,496.00
19	16	5348	Stone, Mosiaic or Terrazzo / Ceramic Tile	126	\$163,675.00
20	15	5183	Plumbing NOC & Drivers	126	\$159,369.00



Tennessee Workers Compensation Insurance Plan
Report: Classifications Rank -- 1 to 20
For Effective Date from 1/1/2010 to 12/31/2010

<i>By Policy Count</i>					
<i>Rank '10</i>	<i>Rank '09</i>	<i>Code</i>	<i>Description</i>	<i>Policy Count</i>	<i>Premium</i>
1	1	5645	Carpentry (one or two family dwellings)	1361	\$1,950,940.00
2	2	5437	Carpentry (cabinets or interior trim)	507	\$605,378.00
3	3	5474	Painting or Paperhanging	494	\$767,177.00
4	4	5551	Roofing	484	\$1,500,579.00
5	5	5403	Carpentry NOC	394	\$680,729.00
6	7	8810	Clerical	316	\$569,684.00
7	6	9014	Buildings - Operations by Contractors	270	\$405,850.00
8	9	5022	Masonry NOC	260	\$496,399.00
9	10	5606	Contractors - Executive Supervisors	239	\$319,821.00
10	8	6217	Excavation & Drivers	237	\$755,042.00
11	12	5478	Carpet, Linoleum, Vinyl, Asphalt	237	\$250,426.00
12	11	5445	Wallboard Installation Within Buildings	225	\$526,871.00
13	14	5190	Electrical Wiring - Within Buildings	205	\$284,860.00
14	13	0042	Landscape Gardening & Drivers	180	\$376,029.00
15	16	7711	Firefighters & Drivers	177	\$423,752.00
16	15	7219	Trucking NOC	173	\$890,323.00
17	18	8742	Salespersons, Collectors or Messengers	171	\$269,675.00
18	17	8835	Nursing-Home Health, Public and Travel	160	\$808,401.00
19	20	5183	Plumbing NOC & Drivers	147	\$177,506.00
20	19	5348	Stone, Mosaic or Terrazzo / Ceramic T	127	\$127,709.00



Tennessee Workers Compensation Insurance Plan

Report: Classifications Rank -- 1 to 20

For Effective Date from 1/1/2009 to 12/31/2009

<i>By Premium</i>					
<i>Rank '09</i>	<i>Rank '08</i>	<i>Code</i>	<i>Description</i>	<i>Policy Count</i>	<i>Premium</i>
1	1	5645	Carpentry (one or two family dwellings)	1384	\$1,952,689.00
2	2	7720	Police Officers & Drivers	75	\$1,857,167.00
3	3	5551	Roofing-All Kinds & Yard Employees	434	\$1,362,349.00
4	4	7219	Trucking NOC	176	\$1,126,563.00
5	150	9516	Television, video, Audio and Radio Equip	14	\$1,022,344.00
6	8	0106	Tree Pruning, Spraying, Repairing & Drivers	95	\$965,023.00
7	5	5474	Painting or Paperhanging	463	\$762,826.00
8	7	8835	Nursing-Home Health, Public and Travel	149	\$756,856.00
9	11	5403	Carpentry NOC	405	\$728,700.00
10	6	5437	Carpentry-Installation of Cabinet Work or Interior	541	\$685,048.00
11	9	6217	Excavation & Drivers	257	\$607,597.00
12	10	8810	Clerical	285	\$562,617.00
13	17	8842	Store: Wholesale NOC	30	\$515,007.00
14	15	7370	Taxicab: All Other Employees	19	\$497,372.00
15	12	5022	Masonry NOC	253	\$460,352.00
16	25	9180	Amusement Device Operation NOC-Not Travelling	54	\$449,882.00
17	21	0042	Landscape Gardening & Drivers	209	\$449,453.00
18	13	9014	Buildings-Operations by Contractors	300	\$435,742.00
19	31	8829	Convalescent or Nursing Home - All Employees	11	\$409,663.00
20	23	5606	Contractor-Executive Supervisor	249	\$390,180.00



Tennessee Workers Compensation Insurance Plan

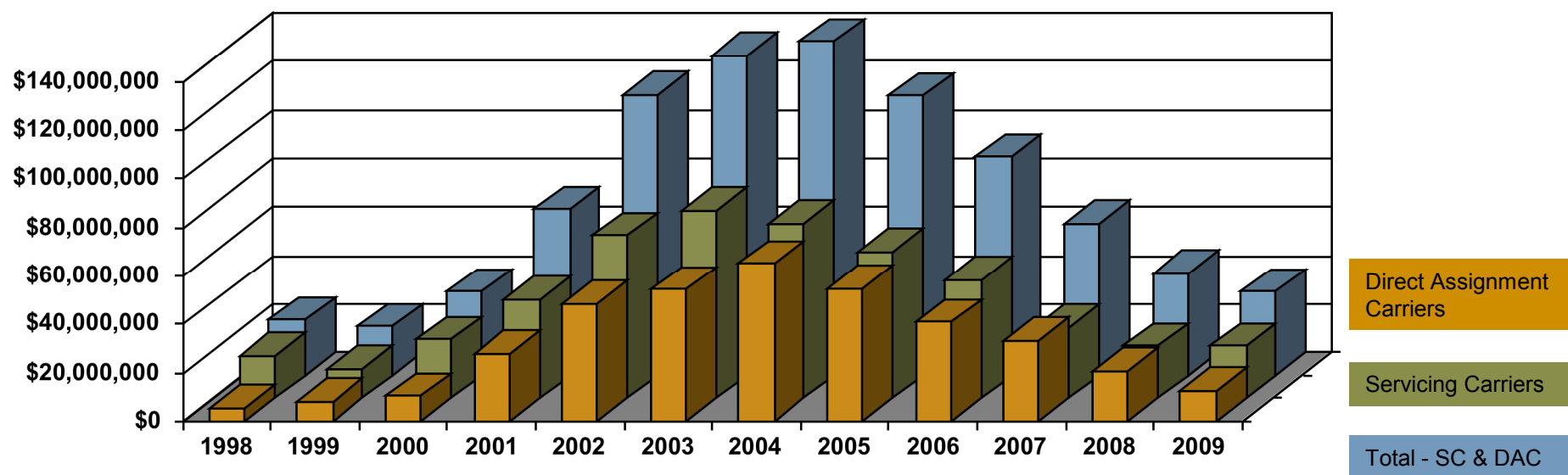
Report: Classifications Rank -- 1 to 20

For Effective Date from 1/1/2010 to 12/31/2010

<i>By Premium</i>					
<i>Rank '10</i>	<i>Rank '09</i>	<i>Code</i>	<i>Description</i>	<i>Policy Count</i>	<i>Premium</i>
1	1	5645	Carpentry (one or two family dwellings)	1361	\$1,950,940.00
2	3	5551	Roofing-All Kinds & Yard Employees	484	\$1,500,579.00
3	4	7219	Trucking NOC	173	\$890,323.00
4	8	8835	Nursing-Home Health, Public and Trav	160	\$808,401.00
5	7	5474	Painting or Paperhanging	494	\$767,177.00
6	11	6217	Excavation & Drivers	237	\$755,042.00
7	6	0106	Tree Pruning, Spraying, Repairing & Drivers	91	\$728,770.00
8	9	5403	Carpentry NOC	394	\$680,729.00
9	10	5437	Carpentry-Installation of Cabinet Work or Interior	507	\$605,378.00
10	14	7370	Taxicab: All Other Employees	14	\$591,366.00
11	12	8810	Clerical	316	\$569,684.00
12	21	5445	Wallboard Installation Within Buildings	225	\$526,871.00
13	16	9180	Amusement Device Operation NOC-Not Travelling	53	\$515,496.00
14	2	7720	Police Officers & Drivers	88	\$505,470.00
15	36	8864	Social Services Organization	66	\$504,105.00
16	15	5022	Masonry NOC	260	\$496,399.00
17	65	7539	Electric Light or Power Company - NOC	4	\$485,754.00
18	24	7711	Firefighters - Volunteer	177	\$423,752.00
19	28	4611	Drug Medicine or Pharmaceutical Preparaton-NO M	4	\$409,134.00
20	18	9014	Buildings-Operations by Contractors	270	\$405,850.00



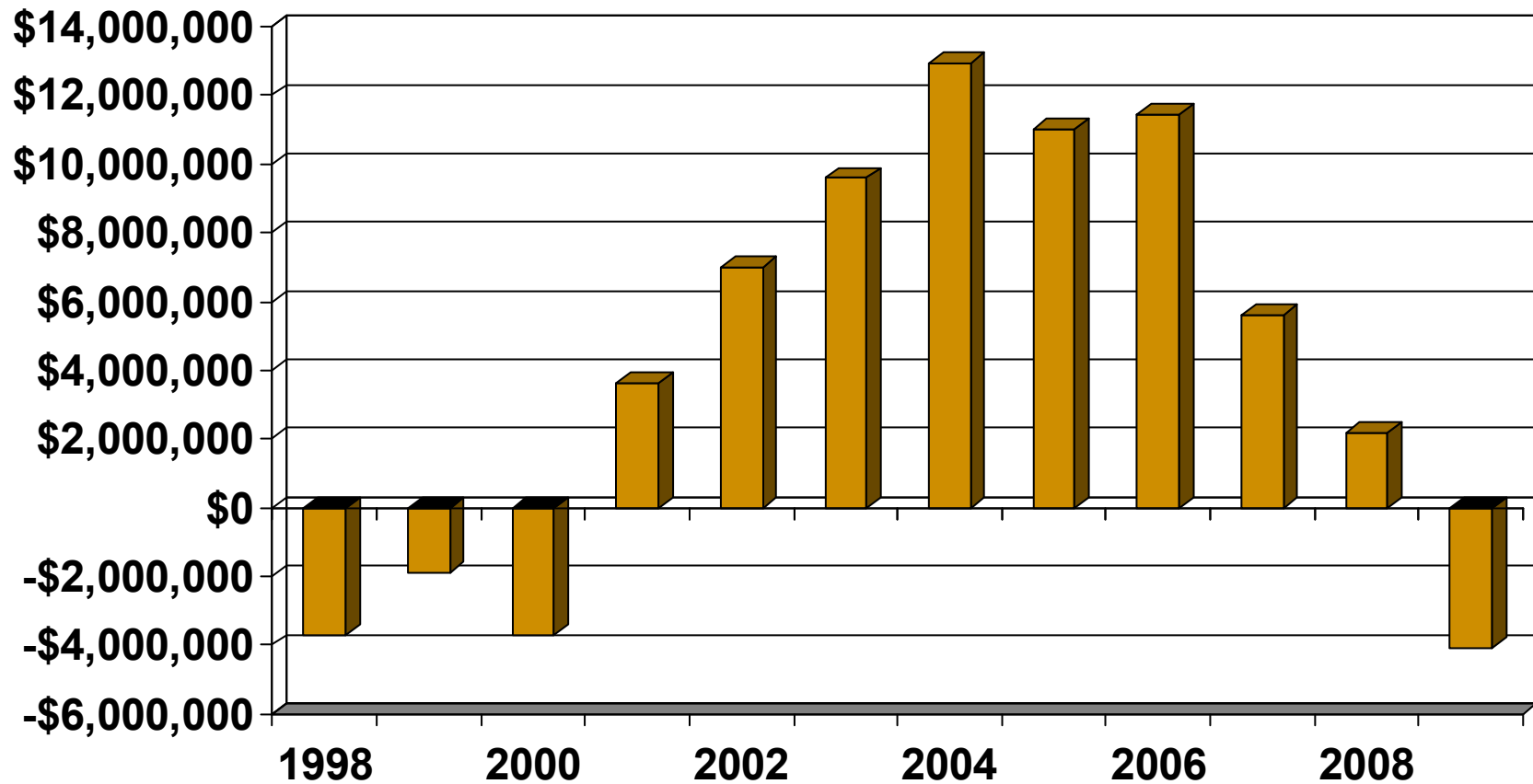
Servicing Carrier and Direct Assignment Carrier Written Premium Report – All Plan Years



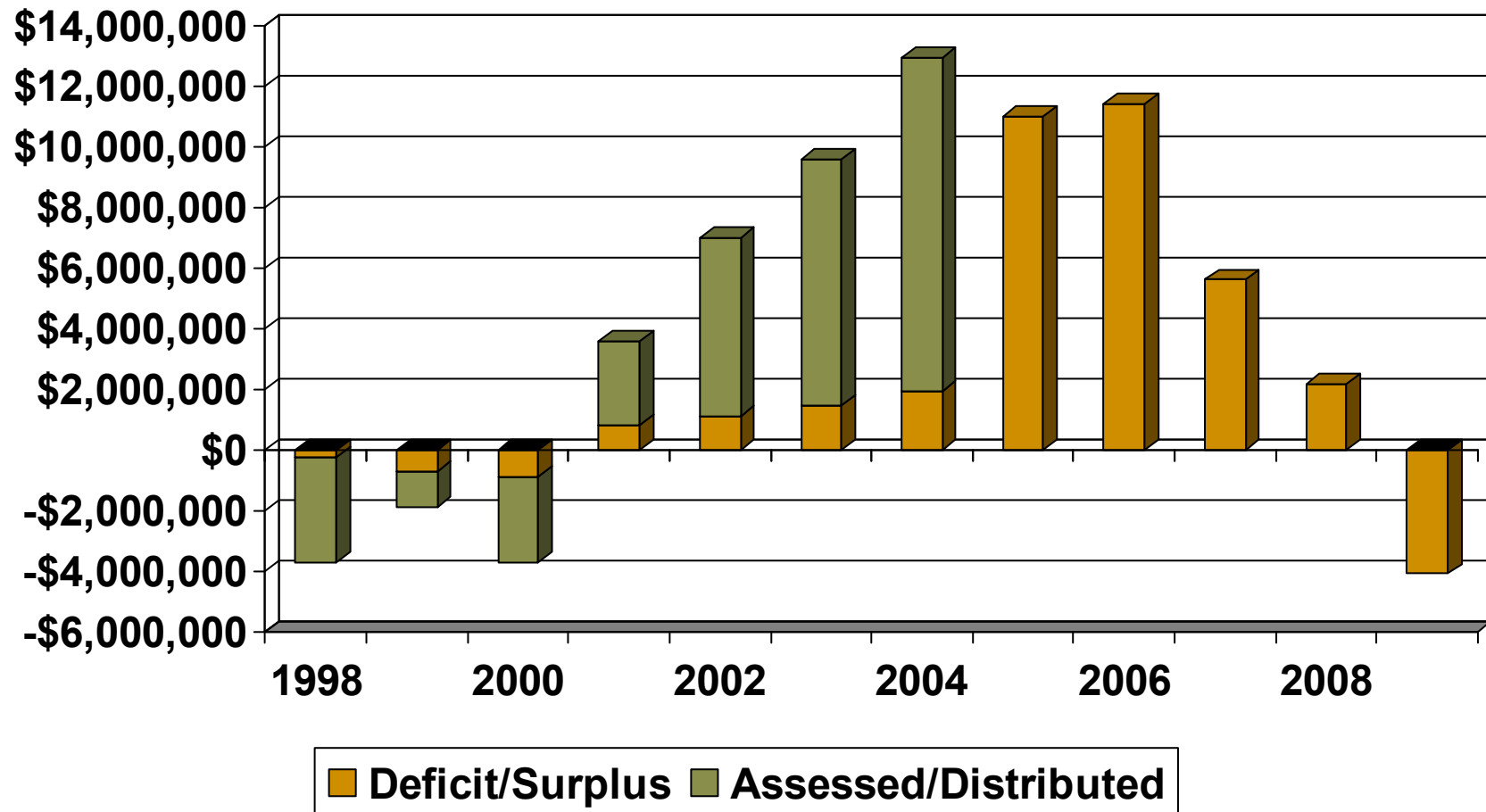
Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
DAC	\$10,557,927	\$27,928,022	\$48,553,973	\$54,410,716	\$65,164,989	\$54,933,676	\$40,758,459	\$33,410,456	\$20,716,372	\$12,738,410
SC	\$24,197,896	\$40,687,333	\$67,291,852	\$77,471,871	\$72,295,247	\$60,406,404	\$49,165,376	\$29,323,282	\$21,540,359	\$21,738,410
Total	\$34,755,823	\$68,615,355	\$115,845,825	\$131,882,587	\$137,460,236	\$115,350,080	\$89,923,835	\$62,687,676	\$42,257,079	\$34,525,193



Deficit/Surplus All Plan Years



Deficit Assessments and Surplus Distributions All Plan Years



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 1998 AGGREGATE LALAE PROJECTIONS

Ultimates based on:					<u>Maximum</u>	<u>Minimum</u>	<u>Selected Ultimate</u>	<u>Earned Premium</u>	<u>Loss Ratio</u>
<u>Paid</u>	<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>					
16,229,473	16,370,980	16,792,200	16,230,603	16,370,585	16,792,200	16,229,473	16,321,000	17,496,308	93.3%

Servicing Carrier Fee Ratio	23.4%
Total Written Premium	17,496,308
Total Servicing Carrier Fees	4,093,237
Total Servicing Carrier Fees Paid to Date (12/31/2009)	4,093,237
All Other Expenses	1,248,422
Total Expenses	5,341,659
Investment Income	683,978
Collected Premium	17,276,305
Uncollected Premium*	220,003
Expense Ratio	30.5%
Combined Ratio	123.8%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	(3,702,375)

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 1999 AGGREGATE LALAE PROJECTIONS

<u>Ultimates based on:</u>					<u>Maximum</u>	<u>Minimum</u>	<u>Selected Ultimate</u>	<u>Earned Premium</u>	<u>Loss Ratio</u>
<u>Paid</u>	<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>					
10,243,518	11,000,800	12,775,062	10,253,530	10,997,113	12,775,062	10,243,518	11,001,000	12,092,779	91.0%

Servicing Carrier Fee Ratio	22.9%
Total Written Premium	12,092,779
Total Servicing Carrier Fees	2,768,221
Total Servicing Carrier Fees Paid to Date (12/31/2009)	2,768,221
All Other Expenses	385,596
Total Expenses	3,153,817
Investment Income	363,162
Collected Premium	12,092,779
Uncollected Premium*	169,382
Expense Ratio	26.1%
Combined Ratio	117.1%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	(1,868,237)

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2000 AGGREGATE LALAE PROJECTIONS

Ultimates based on:							Selected Ultimate	Earned Premium	Loss Ratio
<u>Paid</u>	<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>	<u>Maximum</u>	<u>Minimum</u>			
21,226,059	21,648,535	22,693,586	21,234,161	21,646,569	22,693,586	21,226,059	21,543,000	24,197,896	89.0%

Servicing Carrier Fee Ratio	23.2%
Total Written Premium	24,197,896
Total Servicing Carrier Fees Paid to Date (12/31/2008)	5,611,729
All Other Expenses	616,494
Total Expenses	6,228,220
Investment Income	578,410
Collected Premium	23,466,488
Uncollected Premium*	731,408
Expense Ratio	25.7%
Combined Ratio	114.8%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	(3,726,321)

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2001 AGGREGATE LALAE PROJECTIONS

Ultimates based on:						Selected Ultimate	Earned Premium	Loss Ratio
<u>Paid</u>	<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>	<u>Maximum</u>	<u>Minimum</u>		
26,635,042	26,427,118	26,248,463	26,623,041	26,424,344	26,635,042	26,248,463	26,320,000	40,687,333 64.7%

Servicing Carrier Fee Ratio	23.8%
Total Written Premium	40,687,333
Total Servicing Carrier Fees Paid to Date (12/31/2009)	9,678,502
All Other Expenses	1,355,328
Total Expenses	11,033,830
Investment Income	1,355,328
Collected Premium	39,709,004
Uncollected Premium*	978,329
Expense Ratio	27.1%
Combined Ratio	91.8%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	3,608,754

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2002 AGGREGATE LALAE PROJECTIONS

Ultimates based on:					Maximum	Minimum	Selected Ultimate	Earned Premium	Loss Ratio
<u>Paid</u>	<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>					
39,771,362	43,330,655	49,189,285	39,920,397	43,329,122	49,189,285	39,771,362	43,242,000	67,292,261	64.3%

Servicing Carrier Fee Ratio	23.7%
Total Written Premium	67,292,261
Total Servicing Carrier Fees Paid to Date (12/31/2009)	15,976,292
All Other Expenses	1,727,695
Total Expenses	17,703,986
Investment Income	2,516,000
Collected Premium	65,449,826
Uncollected Premium*	1,842,435
Expense Ratio	26.6%
Combined Ratio	90.6%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	7,019,840

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2003 AGGREGATE LALAE PROJECTIONS

Ultimates based on:							Selected	Earned	Loss
<u>Paid</u>	<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Ultimate</u>	<u>Premium</u>	<u>Ratio</u>
41,912,802	45,000,012	49,443,824	42,055,200	44,985,830	49,443,824	41,912,802	44,599,000	77,471,871	57.6%

Servicing Carrier Fee Ratio	22.4%
Total Written Premium	77,471,871
Total Servicing Carrier Fees Paid to Date (12/31/2009)	17,387,727
All Other Expenses	5,085,402
Total Expenses	22,473,129
Investment Income	2,897,704
Collected Premium	73,769,986
Uncollected Premium*	3,701,885
Expense Ratio	29.0%
Combined Ratio	86.6%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	9,595,562

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2004 AGGREGATE LALAE PROJECTIONS

Ultimates based on:							Selected	Earned	Loss
<u>Paid</u>	<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Ultimate</u>	<u>Premium</u>	<u>Ratio</u>
36,657,774	38,870,747	42,212,958	36,783,689	38,853,904	42,212,958	36,657,774	38,539,000	72,295,247	53.3%

Servicing Carrier Fee Ratio	22.1%
Total Written Premium	72,295,247
Total Servicing Carrier Fees Paid to Date (12/31/2009)	15,986,404
All Other Expenses	5,497,312
Total Expenses	21,483,716
Investment Income	3,460,173
Collected Premium	69,510,506
Uncollected Premium*	2,784,740
Expense Ratio	29.7%
Combined Ratio	83.0%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	12,947,963

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2005 AGGREGATE LALAE PROJECTIONS

Ultimates based on:						Selected	Earned	Loss
<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Ultimate</u>	<u>Premium</u>	<u>Ratio</u>
28,524,916	33,850,733	26,664,009	28,522,434	33,850,733	26,486,399	28,382,000	60,406,550	47.0%

Servicing Carrier Fee Ratio	22.0%
Total Written Premium	60,406,550
Total Servicing Carrier Fees Paid to Date (12/31/2009)	13,304,218
All Other Expenses	7,681,060
Total Expenses	20,985,278
Investment Income	2,542,821
Collected Premium	57,833,477
Uncollected Premium*	2,573,073
Expense Ratio	34.7%
Combined Ratio	81.7%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	11,009,020

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2006 AGGREGATE LALAE PROJECTIONS

Ultimates based on:						Selected Ultimate	Earned Premium	Loss Ratio
<u>Paid</u>	<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>	<u>Maximum</u>	<u>Minimum</u>		
20,407,966	21,893,741	26,015,277	20,572,662	21,889,752	26,015,277	20,407,966	21,834,000	49,165,376 44.4%

Servicing Carrier Fee Ratio	22.2%
Total Written Premium	49,165,376
Total Servicing Carrier Fees Paid to Date (12/31/2009)	10,896,429
All Other Expenses	4,531,375
Total Expenses	15,427,804
Investment Income	1,406,294
Collected Premium	47,283,193
Uncollected Premium*	1,882,183
Expense Ratio	31.4%
Combined Ratio	75.8%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	11,427,683

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2007 AGGREGATE LALAE PROJECTIONS

Ultimates based on:						Selected Ultimate	Earned Premium	Loss Ratio
<u>Paid</u>	<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>	<u>Maximum</u>	<u>Minimum</u>		
14,657,235	16,195,706	17,365,400	14,865,148	16,176,089	17,365,400	14,657,235	16,042,000	29,326,833 54.7%

Servicing Carrier Fee Ratio	22.3%
Total Written Premium	29,326,833
Total Servicing Carrier Fees Paid to Date (12/31/2009)	6,550,829
All Other Expenses	931,985
Total Expenses	7,483,814
Investment Income	339,594
Collected Premium	29,326,833
Uncollected Premium*	517,986
Expense Ratio	25.5%
Combined Ratio	80.2%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	5,623,627

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2008 AGGREGATE LALAE PROJECTIONS

Ultimates based on:						Selected	Earned	Loss
<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Ultimate</u>	<u>Premium</u>	<u>Ratio</u>
12,920,283	13,144,010	12,506,658	12,927,303	13,144,010	12,320,187	12,800,000	21,540,971	59.4%

Servicing Carrier Fee Ratio	21.4%
Total Written Premium	21,540,971
Total Servicing Carrier Fees Paid to Date (12/31/2009)	4,619,488
All Other Expenses	783,573
Total Expenses	5,403,061
Investment Income	68,564
Collected Premium	20,331,951
Uncollected Premium*	1,209,020
Expense Ratio	25.1%
Combined Ratio	84.5%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	2,197,454

*Uncollected Premium = Written Premium - Collected Premium



**Tennessee Workers Compensation Insurance Plan
Summary - Servicing Carrier Totals**

as of 12/31/2010

POLICY YEAR 2009 AGGREGATE LALAE PROJECTIONS

Ultimates based on:						Selected	Earned	Loss
<u>Incurred</u>	<u>Case Res.</u>	<u>Pd. B/F</u>	<u>Inc'd. B/F</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Ultimate</u>	<u>Premium</u>	<u>Ratio</u>
17,451,313	18,782,340	15,163,372	17,368,122	18,782,340	13,584,248	17,096,000	21,686,587	78.8%

Servicing Carrier Fee Ratio	20.7%
Total Written Premium	21,686,587
Total Servicing Carrier Fees Paid to Date (12/31/2009)	4,490,165
All Other Expenses	2,324,184
Total Expenses	6,814,348
Investment Income	14,604
Collected Premium	19,795,241
Uncollected Premium*	1,891,346
Expense Ratio	31.4%
Combined Ratio	110.3%
Surplus/(Deficit) of Earned Premium to Ultimate LALAE & Fees	(4,100,503)

*Uncollected Premium = Written Premium - Collected Premium





*State of Tennessee
Advisory Council on Workers' Compensation*

*Assigned Risk Plan Data
August 2011*

Questions?



TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION

ACTUARIAL REPORT

*Review of NCCI Advisory
Loss Cost Filings
for the Voluntary Market
Effective 11/1/11 and 3/1/12*

By The Numbers
Actuarial
Consulting, Inc.

September 16, 2011

Mr. David H. Lillard, Jr., Tennessee State Treasurer
Chairman, Advisory Council on Workers' Compensation
State Capitol, 1st Floor
600 Charlotte Avenue
Nashville, Tennessee 37243-0225

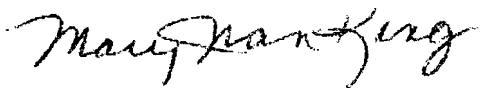
Dear Mr. Lillard:

Enclosed is the actuarial report prepared for the Tennessee Advisory Council on Workers' Compensation. This report contains our review of the National Council on Compensation Insurance, Inc. (NCCI) filings effective 11/1/11 and 3/1/12.

The estimates and analysis contained in this report are based on data provided by NCCI including the filing memorandum dated 8/1/11 and 8/19/11, the technical supplement to the 3/1/12 filing, and the answers to questions concerning the filings provided by NCCI. Any discrepancy in the completeness, interpretation, or accuracy of the information used may require a revision to this report.

If you have any questions, please call or write. It is a pleasure to be of service to the Advisory Council.

Sincerely,



Mary Jean King, FCAS, FCA, MAAA
Consulting Actuary



Lisa Dennison, FCAS, FCA, MAAA
President and Consulting Actuary

cc: Lynn Ivanick, Esq.
Administrator, Advisory Council on Workers' Compensation

TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION

ACTUARIAL REPORT

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TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION

ACTUARIAL REPORT

PURPOSE

By the Numbers Actuarial Consulting, Inc. (BYNAC) has been retained by the Tennessee Advisory Council on Workers' Compensation to prepare this actuarial report to present a professional analysis of the National Council on Compensation Insurance, Inc. (NCCI) Tennessee Law-Only Workers Compensation Voluntary Lost Cost filing effective 11/1/11 and Workers Compensation Loss Costs and Rating Values Tennessee Voluntary Market filing effective 3/1/12. The basis of the analysis is the NCCI filing memorandum dated 8/1/11 and 8/19/11 including the technical supplement. BYNAC did not audit the premium or loss data underlying the NCCI filing, nor did we verify the accuracy of NCCI's detail calculations. An analysis of the federal classifications changes and the assigned risk multiplier is beyond the scope of this report.

The following items will be addressed in this report:

- An evaluation of the data selected by the NCCI underlying its annual loss cost filing.
- An analysis of the NCCI's methodology in arriving at its calculation of the proposed change in loss costs and loss adjustment expense.

- An examination of the appropriateness of the methodology used by the NCCI in its selection of estimates employed to arrive at ultimate loss cost for past and forecast periods.
- An analysis of the NCCI's selection of trend factors.

FINDINGS

Based on BYNAC's review of the NCCI filings, the proposed changes of +6.3% effective 11/1/11 and +1.6% effective 3/1/12 have been reasonably calculated in accordance with actuarial standards of practice.

The 11/1/11 law-only filing adjusts the loss costs for the impact of the 8/26/09, 1/1/10, and 1/1/11 medical fee changes. The impact has been calculated in a reasonable manner and the combined effect of the 3/1/11 and 11/1/11 filings (+0.9%) is equal to the indication that would have been calculated at 3/1/11 using the medical on-level factors that included these medical fee changes (Appendix A, Exhibit I).

Due to the large amount of actuarial analysis underlying most of the exhibits in this filing, it was impossible to review all of the detail calculations in the time given for BYNAC's review. It is BYNAC's recommendation that a different area be selected for detailed review each year. In this, BYNAC's first review of the NCCI Tennessee filings, BYNAC's main focus has been on the development of estimated ultimate losses. BYNAC reviewed paid as well as incurred development and experience for policy years 2005 through 2007 in addition to the policy years underlying the filing of 2008 and 2009 in order to test the assumptions made by NCCI in selecting the data and development method for review. No significant differences to the NCCI calculations were found in this review and BYNAC is in general agreement with the selections made by NCCI.

BYNAC also reviewed the selection of trend. BYNAC believes that a medical trend factor of 1.005 would be more appropriate than the 1.010 factor used by NCCI. The selection of medical trend of 1.005 would result in an overall indication of +0.3% (Appendix A, Exhibit II).

The proposed loss based expense load of 19.7% is a decrease from the load in the 3/1/11 filing of 20.3%. This factor is more in keeping with the factor used in filings prior to 3/1/11. The decrease is due to lower than expected development in the countrywide loss based expense ratios to loss. The selected load is based on countrywide data because of the instability observed in the Tennessee relativity since 2004. The rationale for this recommendation is reasonable.

The calculation of industry group differentials was carefully reviewed in the consulting actuary's report on the 3/1/11 filing. The indicated differentials in the 3/1/11 filing were significantly different than the differentials in the 3/1/10 filing. The proposed differentials for 3/1/12 are more in line with the 3/1/10 differentials and should be accepted.

OVERVIEW OF FILINGS

SUMMARY OF PROPOSED LOSS COST CHANGES

NCCI is proposing to increase loss costs to reflect changes to the Tennessee medical fee schedule effective 8/26/09, 1/1/10, and 1/1/11. These changes were not included in the calculation of on-level factors in the 3/1/11 loss cost filing and so NCCI is proposing that this increase be effective 11/1/11. In addition, NCCI is proposing an increase in loss costs based on premium and loss experience effective 3/1/12.

The breakdown of the proposed changes by industry groups is as follows:

Industry Group	Loss Cost Change Eff 11/1/11	Loss Cost Change Eff 3/1/12	Loss Cost Change Combined
Manufacturing	6.2%	2.3%	8.6%
Contracting	6.4%	-1.3%	5.0%
Office & Clerical	5.6%	-2.0%	3.5%
Goods & Services	6.9%	5.4%	12.7%
Miscellaneous	6.1%	0.2%	6.3%
Overall	6.3%	1.6%	8.0%

OTHER PROPOSED CHANGES

In addition to the loss cost changes, NCCI has included in the filing a number of class code changes, changes to the rules to determine minimum premium, and updates to the loss elimination ratios and retrospective rating plan parameters. The calculation of the updates to the loss elimination ratios and retrospective rating plan parameters were not presented in the filing or technical supplement and were not reviewed for this report.

DATA

The data used for the statewide indication is premium and losses for policy years 2008 and 2009, evaluated as of 12/31/10. The use of policy year data provides a good match of losses to the underlying policy premium and the policy years selected are the most recent available. NCCI has indicated that all concerns that were raised during the data validation process were resolved with the sending carriers. No individual carrier data was excluded from this report. Combined voluntary and assigned risk data is used. Assigned Risk represents approximately 6.5% of the policy years 2008 and 2009 market share.

LAW ONLY FILING ANALYSIS

The law only filing is in response to medical fee schedule changes that *have already been implemented* effective 8/26/09, 1/1/10, and 1/1/11. NCCI indicated that these changes were not included in the on-level factor calculations used in the 3/1/11 loss cost filing because NCCI was not aware of the changes at the time of the filing. It is important that there be good communication with NCCI concerning all statutory benefit changes since these have a significant impact on the statewide indication. If these changes had been properly reflected in the 3/1/11 filing, the overall indication would have been a slight increase instead of a decrease (Appendix A, Exhibit I).

The cost impact of the changes was estimated based on the change in the maximum allowable reimbursements and the frequency of each procedure. This methodology is reasonable. An assumption is made based on a Centers for Medicare and Medicaid Services study concerning the savings associated with reductions to the medical fee schedule. This study indicates that an offset between 30% and 50% should be applied to calculated savings. NCCI used an offset of 40% and indicated to BYNAC that the overall cost impact is not sensitive to this assumption and would not change if offsets of 30% or 50% were used.

NCCI did not make any adjustment to the cost impact calculation for the 8/26/09 medical fee changes that were part of the policy year 2008 experience used in the 3/1/11 filing. Based on BYNAC's own calculations, this adjustment would have been minimal and is not necessary.

STATEWIDE INDICATION ANALYSIS

OVERVIEW

The statewide indicated change is based on premium and loss data for policy years 2008 and 2009. Standard earned premium is developed to ultimate to account for payroll audits that occur after the valuation date. Premium is then brought to the level of the current loss costs based on changes in loss costs since the experience period.

Limited indemnity and medical paid losses plus case reserves are developed to ultimate. An on-level factor is also applied to losses to reflect changes to statutory benefit levels since the experience period. In addition, a factor is applied to include loss based expenses in the cost ratio. A separate indemnity and medical limited cost ratio is calculated. A projected cost ratio for the proposed policy period is then calculated by applying factors for trend, to adjust the losses to an unlimited basis, and for proposed changes in benefit levels.

The medical and indemnity cost ratios are added to arrive at a projected cost ratio for each policy year. The average of the projected cost ratio for the two policy years is selected by NCCI. The indicated change based on experience, trend, and benefits is multiplied by the effect of the proposed change in loss based expenses to calculate the proposed overall change.

Policy Year	Projected Cost Ratio		
	Indemnity	Medical	Combined
2008	0.329	0.665	0.994
2009	0.338	0.710	1.048
Selected			1.021

	DCCE Ratio	AOE Ratio	LAE Ratio
Current	12.5%	7.8%	20.3%
Proposed	12.2%	7.5%	19.7%
Change			0.995
Overall Change			1.6%

ANALYSIS OF METHODOLOGY

The methodology used by NCCI to calculate the statewide indication is well accepted and reasonable. Incurred loss development is the most widely used method of estimating ultimate incurred losses. However, many other methods do exist and BYNAC would like to see at least one other method of estimating ultimate losses presented in the report each year.

Inherent in the incurred loss development technique is the assumption that there are no changes in reserving practices. A paid loss development method would provide a check to this assumption. Paid loss development assumes that there are no changes in claims settlement practices. Tennessee has experienced changes to the rules regarding settlement of medical costs in 2004 and this year more changes have been enacted which have had an impact on the paid loss development.

NCCI has indicated that in their judgment, the incurred loss development provides the best estimate of ultimate. BYNAC has reviewed the paid development data and agrees that the 2004 changes had a significant impact on the paid development.

The use of on-level factors to bring premium to the current loss cost level is also a well accepted technique. The best method would be to recalculate the premium using current loss costs but this would be overly complicated for a statewide indication based on all voluntary and assigned risk experience. The use of a Tennessee specific distribution of policy effective dates increases the accuracy of the on-level factor calculation. As a matter of simplicity, the most recent distribution is used for all policy years. This distribution was updated with the 3/1/12 filing which resulted in changes to the policy year 2008 weights. NCCI has indicated that these changes did not have a significant impact on the overall indication.

In selecting trend factors, NCCI examines claim frequency and severity separately and adjusts the severity to the current statutory benefit level and also removes the impact of the growth in payroll over the experience period. NCCI then combines the historical frequency with the adjusted severity to produce loss ratio trend experience. Policy year trend is used as the basis for the selection but accident year trend is also presented. The selection of trend factors involves a great deal of judgment and is subject to a wide range of opinion concerning the appropriate factor.

Five accident years of countrywide loss adjustment expense (LAE) data is presented as the basis for the LAE factor. A relativity of Tennessee defense and cost containment (DCC) expense to countrywide DCC is calculated based on the latest five calendar years paid data (2006 – 2010). Although the standard procedure is to apply the state relativity to the countrywide DCC ratio, NCCI is proposing using the countrywide ratio without adjustment. NCCI believes that changes in the loss payout pattern since the 2004 reforms have led to increases in the relativity factor that are not due to expense increases. Countrywide adjusting and other expense (AOE) is also used.

The selected countrywide factors are an average of the two most recent years. Although the recent factors are relatively consistent, the use of a two year average does not provide much stability and has resulted in some bouncing around from 19.9% in the 3/1/10 filing to 20.3% in the 3/1/11 filing back to 19.7% in the current filing. Decreases in the estimated ultimate DCCE and AOE ratios to loss have also contributed to the instability.

The methodology to limit losses in the development and trend calculations and adjust the limited cost ratio to an unlimited basis is the same as that used in the prior filing. This methodology was implemented in 2004 to temper the impact of one large claim on the overall statewide indication. The selected statewide excess factor of 0.023 is consistent with the ratios used in the prior two filings of 0.021 and 0.022.

A comparison of the adjustment factors in the current and prior filings is presented below:

	Most Recent Policy Year		Older Policy Year	
	Eff 3/1/12	Eff 3/1/11	Eff 3/1/12	Eff 3/1/11
Premium Development Factor	0.997	1.007	0.999	0.999
Indemnity Paid+ Case Development Factor	1.278	1.277	1.095	1.092
Medical Paid+ Case Development Factor	1.449	1.477	1.387	1.392
Indemnity Trend	0.906	0.906	0.879	0.879
Medical Trend	1.033	1.016	1.043	1.021
Loss Adjustment Expense	1.197	1.203	1.197	1.203
Excess Loss Loading	1.024	1.021	1.024	1.021

DEVELOPMENT

The ultimate cost of claims incurred for a specific time period is usually not known until several years after the close of that period. Loss development factors project the additional cost expected on claims. The calculation and selection of development factors to be applied to incurred indemnity losses are shown in Table 1, beginning with Tennessee's limited incurred policy year losses excluding LAE. The historical and expected loss development patterns are

Table 1

**STATE OF TENNESSEE
WORKERS COMPENSATION**

INDEMNITY INCURRED LOSS DEVELOPMENT

A. LIMITED PAID + CASE INDEMNITY LOSSES FOR MATCHING COMPANIES

Policy Year	1st Report	2nd Report	2nd Report	3rd Report	3rd Report	4th Report	4th Report	5th Report	5th Report	6th Report	6th Report	7th Report
1999											171,978,035	170,619,117
2000									178,896,092	179,870,071	179,961,579	180,613,212
2001							180,677,952	182,805,755	184,070,593	184,487,796	183,406,980	182,671,374
2002					175,859,968	177,131,696	177,662,185	179,408,350	179,408,349	179,573,121	178,705,035	178,589,506
2003			174,939,263	183,702,888	184,691,923	188,177,166	188,177,168	189,956,096	189,956,096	190,439,670	187,103,328	187,109,623
2004	130,891,855	153,388,359	155,106,476	165,215,126	165,215,127	168,859,171	168,859,171	169,698,446	169,466,194	170,146,329		
2005	128,980,692	152,141,573	152,141,573	161,451,665	161,451,665	165,393,313	165,393,313	166,692,296				
2006	146,771,520	174,215,468	174,215,468	186,309,192	186,309,192	189,249,710						
2007	150,141,221	176,061,023	176,061,023	185,722,833								
2008	138,284,470	155,462,696										

B. AGE-TO-AGE FACTORS

Policy Year	1st to 2nd Report	2nd to 3rd Report	3rd to 4th Report	4th to 5th Report	5th to 6th Report	6th to 7th Report
1999						0.992
2000					1.005	1.004
2001				1.012	1.002	0.996
2002			1.007	1.010	1.001	0.999
2003		1.050	1.019	1.009	1.003	1.000
2004	1.172	1.065	1.022	1.005	1.004	
2005	1.180	1.061	1.024	1.008		
2006	1.187	1.069	1.016			
2007	1.173	1.055				
2008	1.124					
Average	1.167	1.060	1.018	1.009	1.003	0.998
Wtd Avg	1.167	1.060	1.017	1.009	1.003	0.998
3 Yr Avg	1.161	1.062	1.021	1.007	1.003	0.998
5 Yr Mid Avg	1.175	1.060	1.019	1.009	1.003	0.998
Prior	1.169	1.057	1.017	1.007	1.002	0.998
NCCI	1.167	1.060	1.018	1.009	1.003	0.998
BYNAC	1.168	1.060	1.019	1.009	1.003	0.998

C. INDEMNITY INCURRED LOSS DEVELOPMENT FACTOR

1st Report to Ultimate	2nd Report to Ultimate	3rd Report to Ultimate	4th Report to Ultimate	5th Report to Ultimate	6th Report to Ultimate	7th Report to Ultimate
1.280	1.096	1.034	1.015	1.006	1.003	1.005

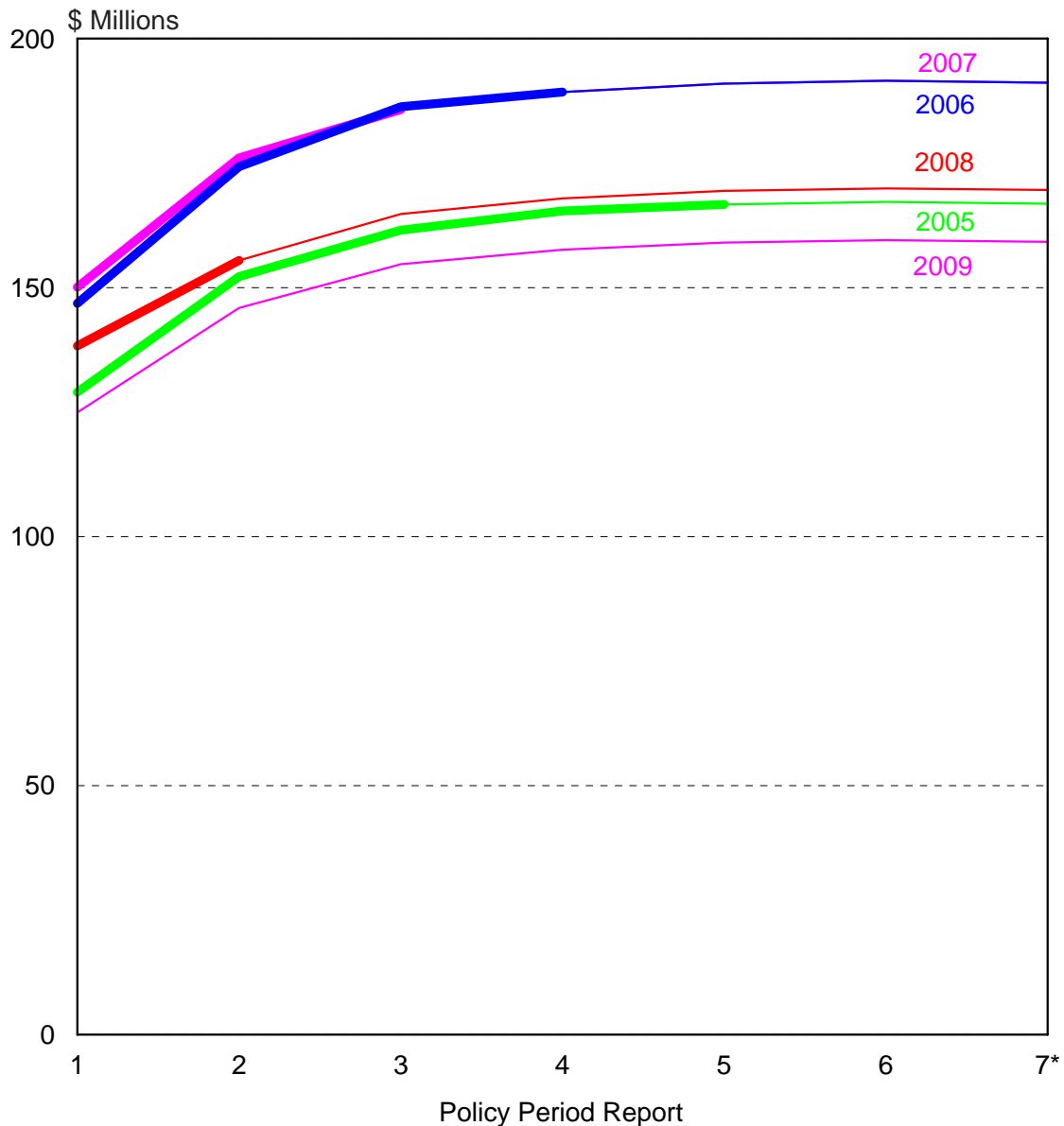
graphically illustrated in Figure 1 by thick and thin lines, respectively. Medical incurred loss development for the 1st through 7th reports is shown in Table 2 and Figure 2. For both indemnity and medical losses, NCCI selected 5 year average factors (with the exception of the 16th to 17th report medical losses where an outlying factor was removed from the average). The NCCI selections are reasonable. Also shown on Tables 1 and 2 are the BYNAC selections. BYNAC selections matched NCCI after the 6th report. In Table 3, ultimate incurred indemnity and medical losses are estimated by using the BYNAC selections.

The standard earned premium also needs to be developed to ultimate to account for changes to earned premium such as payroll audits that are completed after the 1st report. Table 4 shows the premium development with the NCCI and BYNAC selections. Table 5 shows the estimated ultimate earned premium.

Table 6 shows the calculation of historical and projected cost ratios using BYNAC's estimated ultimate losses and standard earned premium and the BYNAC trend selection described below. Figure 3 presents a comparison of the historical cost ratios to the target cost ratio of 1.000. This is a retrospective test of the adequacy of historical rates. A cost ratio above the target would indicate that rates were inadequate in the period. All of the cost ratios in the experience period were below the target. Figure 4 presents the BYNAC projected cost ratios by policy year compared to the BYNAC and NCCI selected cost ratios.

Figure 1

STATE OF TENNESSEE WORKERS COMPENSATION
HISTORICAL AND EXPECTED DEVELOPMENT OF INDEMNITY INCURRED LOSSES
(Limited Losses Excluding LAE)



* Additional development of 0.5% is expected after 7th report.

Table 2

**STATE OF TENNESSEE
WORKERS COMPENSATION**

MEDICAL INCURRED LOSS DEVELOPMENT

A. LIMITED PAID + CASE MEDICAL LOSSES FOR MATCHING COMPANIES

Policy Year	1st Report	2nd Report	2nd Report	3rd Report	3rd Report	4th Report	4th Report	5th Report	5th Report	6th Report	6th Report	7th Report
1999												179,449,179
2000									179,784,158	184,233,830	184,395,257	182,763,264
2001							185,599,425	191,459,214	192,917,413	199,144,547	198,142,581	190,740,338
2002					186,540,124	194,013,054	195,416,387	200,745,175	200,745,176	213,645,793	212,326,311	198,779,632
2003			205,313,906	204,995,333	205,934,665	211,251,664	211,251,665	217,883,549	217,883,444	220,778,193	218,086,174	221,938,812
2004	190,408,688	202,007,082	204,121,592	209,170,804	209,170,804	219,709,286	219,709,286	229,565,513	230,537,726	238,209,284		
2005	175,303,423	180,223,881	180,223,882	187,910,014	187,910,014	200,989,391	201,110,191	209,103,902				
2006	192,006,252	197,559,506	197,559,506	206,531,006	206,599,941	216,607,053						
2007	208,591,460	222,427,925	222,427,925	228,815,005								
2008	186,422,581	194,012,057										

B. AGE-TO-AGE FACTORS

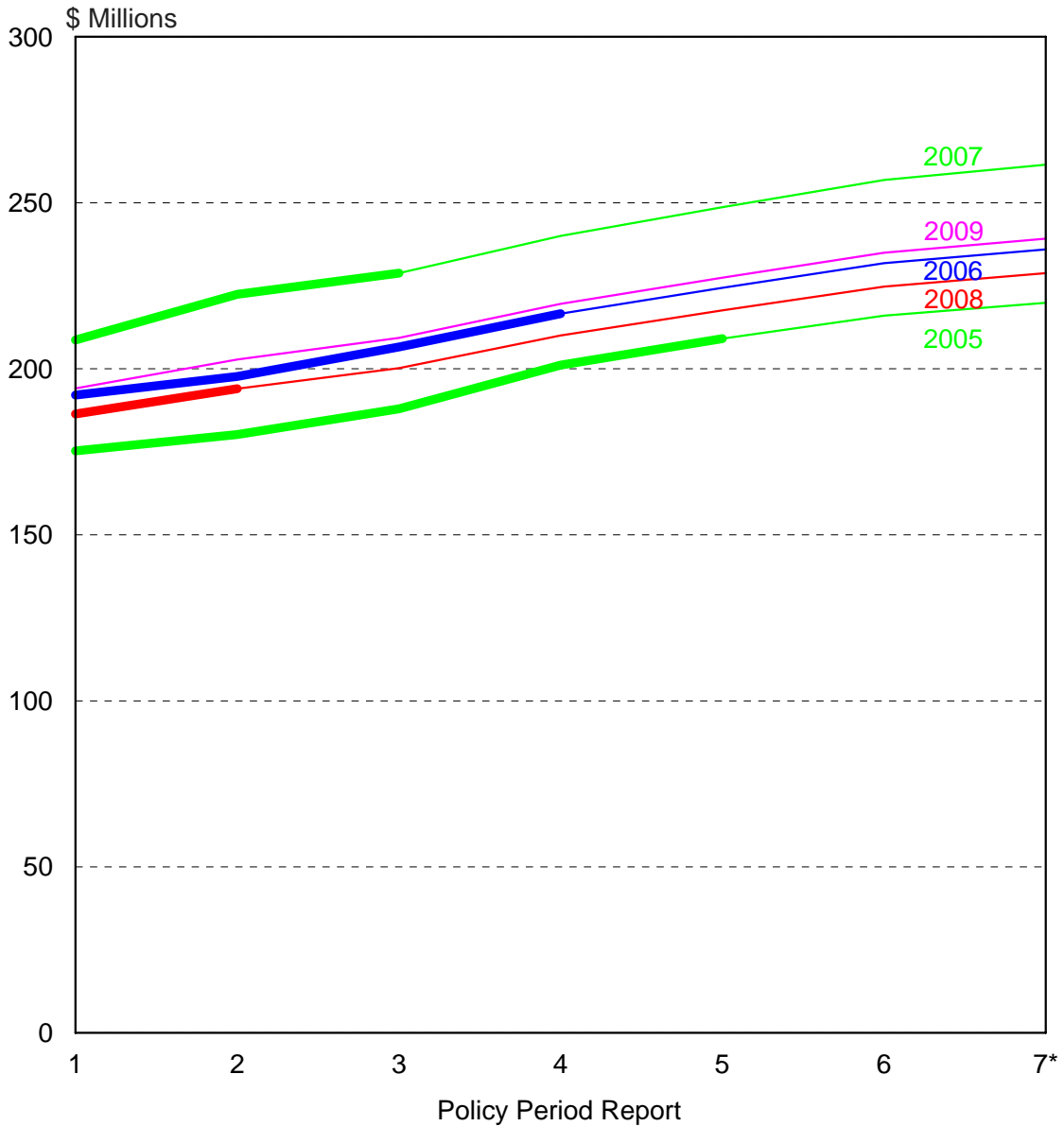
Policy Year	1st to 2nd Report	2nd to 3rd Report	3rd to 4th Report	4th to 5th Report	5th to 6th Report	6th to 7th Report
1999						1.018
2000					1.025	1.034
2001				1.032	1.032	1.003
2002			1.040	1.027	1.064	1.023
2003		0.998	1.026	1.031	1.013	1.018
2004	1.061	1.025	1.050	1.045	1.033	
2005	1.028	1.043	1.070	1.040		
2006	1.029	1.045	1.048			
2007	1.066	1.029				
2008	1.041					
Average	1.045	1.028	1.047	1.035	1.033	1.019
Wtd Avg	1.046	1.028	1.047	1.035	1.033	1.019
3 Yr Avg	1.045	1.039	1.056	1.039	1.037	1.015
5 Yr Mid Avg	1.044	1.032	1.046	1.034	1.030	1.020
Prior	1.061	1.024	1.047	1.029	1.034	1.027
NCCI	1.045	1.028	1.047	1.035	1.033	1.019
BYNAC	1.045	1.032	1.049	1.036	1.033	1.018

C. MEDICAL INCURRED LOSS DEVELOPMENT FACTOR

1st Report to Ultimate	2nd Report to Ultimate	3rd Report to Ultimate	4th Report to Ultimate	5th Report to Ultimate	6th Report to Ultimate	7th Report to Ultimate
1.457	1.394	1.351	1.288	1.243	1.203	1.182

Figure 2

STATE OF TENNESSEE WORKERS COMPENSATION
HISTORICAL AND EXPECTED DEVELOPMENT OF MEDICAL INCURRED LOSSES
(Limited Losses Excluding LAE)



* Additional development of 18.2% is expected after 7th report.

Table 3

**STATE OF TENNESSEE
WORKERS COMPENSATION**

ESTIMATED ULTIMATE INCURRED LOSSES

A. INDEMNITY

Policy Period	Limited Incurred Losses as of 12/31/10	Incurred Loss Development Factor	Estimated Ultimate Incurred Losses
1/1-12/31/05	\$166,692,296	1.006	\$167,692,450
1/1-12/31/06	189,249,710	1.015	192,088,456
1/1-12/31/07	185,722,833	1.034	192,037,409
1/1-12/31/08	155,462,696	1.096	170,387,115
1/1-12/31/09	124,938,422	1.280	159,921,180
Total	\$822,065,957		\$882,126,610

B. MEDICAL

Policy Period	Limited Incurred Losses as of 12/31/10	Incurred Loss Development Factor	Estimated Ultimate Incurred Losses
1/1-12/31/05	\$ 209,103,902	1.243	\$ 259,916,150
1/1-12/31/06	216,607,053	1.288	278,989,884
1/1-12/31/07	228,815,005	1.351	309,129,072
1/1-12/31/08	194,012,057	1.394	270,452,807
1/1-12/31/09	194,086,348	1.457	282,783,809
Total	\$1,042,624,365		\$1,401,271,722

Table 4

**STATE OF TENNESSEE
WORKERS COMPENSATION**

PREMIUM DEVELOPMENT FACTORS

A. STANDARD PREMIUM FOR MATCHING COMPANIES

Policy Year	1st Report	2nd Report	2nd Report	3rd Report	3rd Report	4th Report	4th Report	5th Report
2003							588,742,335	589,120,424
2004					636,695,551	637,098,369	637,098,369	637,257,697
2005			649,606,099	649,211,113	649,211,113	648,630,871	648,630,871	648,451,564
2006	659,490,575	664,411,159	665,075,963	663,655,119	662,497,727	662,904,054		
2007	696,091,173	696,603,632	694,186,920	693,367,732				
2008	630,351,937	621,498,485						

B. AGE-TO-AGE FACTORS

Policy Year	1st to 2nd Report	2nd to 3rd Report	3rd to 4th Report	4th to 5th Report
2003				1.001
2004			1.001	1.000
2005		0.999	0.999	1.000
2006	1.007	0.998	1.001	
2007	1.001	0.999		
2008	0.986			
Average	0.998	0.999	1.000	1.000
Wtd Avg	0.998	0.999	1.000	1.000
Prior	1.008	0.999	1.000	1.000
NCCI	0.998	0.999	1.000	1.000
BYNAC	1.002	0.999	1.000	1.000

C. PREMIUM DEVELOPMENT FACTOR

1st Report to Ultimate	2nd Report to Ultimate	3rd Report to Ultimate	4th Report to Ultimate	5th Report to Ultimate
1.001	0.999	1.000	1.000	1.000

Table 5

**STATE OF TENNESSEE
WORKERS COMPENSATION**

ESTIMATED ULTIMATE STANDARD EARNED PREMIUM

Policy Period	Standard Earned Premium of 12/31/10	Premium Development Factor	Estimated Ultimate Standard Earned Prem
1/1-12/31/05	\$ 648,451,564	1.000	\$ 648,451,564
1/1-12/31/06	664,030,353	1.000	664,030,353
1/1-12/31/07	695,689,743	1.000	695,689,743
1/1-12/31/08	624,137,309	0.999	623,513,172
1/1-12/31/09	548,905,804	1.001	549,454,710
Total	\$3,181,214,773		\$3,181,139,542

Table 6

**STATE OF TENNESSEE
WORKERS COMPENSATION**

HISTORICAL AND PROJECTED COST RATIOS

A. INDEMNITY

Policy Period	Estimated Ultimate Limited Losses	Factor to Include LAE	Factor to Adjust Losses to Unlimited	Estimated Ultimate Loss + LAE	On Level Factor*	Trend Factor~	Projected Ultimate Loss + LAE^
1/1-12/31/05	\$167,692,450	1.190	1.024	\$ 204,343,312	1.049	0.802	\$173,791,668
1/1-12/31/06	192,088,456	1.191	1.024	234,268,008	1.040	0.827	203,519,346
1/1-12/31/07	192,037,409	1.194	1.024	234,795,690	1.031	0.852	207,801,980
1/1-12/31/08	170,387,115	1.196	1.024	208,673,781	1.023	0.879	188,741,256
1/1-12/31/09	159,921,180	1.200	1.024	196,511,146	1.016	0.906	181,339,943
Total	\$882,126,610			\$1,078,591,937			\$955,194,193

B. MEDICAL

Policy Period	Estimated Ultimate Limited Losses	Factor to Include LAE	Factor to Adjust Losses to Unlimited	Estimated Ultimate Loss + LAE	On Level Factor*	Trend Factor~	Projected Ultimate Loss + LAE^
1/1-12/31/05	\$259,916,150	1.190	1.024	\$ 316,723,424	1.077	1.037	\$ 357,596,541
1/1-12/31/06	278,989,884	1.191	1.024	340,251,599	1.093	1.032	387,662,596
1/1-12/31/07	309,129,072	1.194	1.024	377,958,515	1.078	1.026	421,183,701
1/1-12/31/08	270,452,807	1.196	1.024	331,224,635	1.105	1.021	375,876,434
1/1-12/31/09	282,783,809	1.200	1.024	347,484,744	1.063	1.016	376,224,519
Total	\$1,401,271,722			\$1,713,642,917			\$1,918,543,791

C. EARNED PREMIUM AND COST RATIO

Policy Period	Estimated Ultimate Standard Earned Prem	On Level Factor	Estimated On Level Standard Earned Prem	Historical Cost Ratio	Projected Cost Ratio
1/1-12/31/05	\$ 648,451,564	0.829	\$ 537,566,347	0.804	0.989
1/1-12/31/06	664,030,353	0.864	573,722,225	0.865	1.030
1/1-12/31/07	695,689,743	0.867	603,163,007	0.881	1.043
1/1-12/31/08	623,513,172	0.922	574,879,145	0.866	0.982
1/1-12/31/09	549,454,710	0.980	538,465,616	0.990	1.035
Total	\$3,181,139,542		\$2,827,796,340		
				Weighted 5 Year Average	1.016
				Weighted 2 Year Average	1.008
				NCCI Selected	1.021
				BYNAC Selected	1.008

* Weights for policy years 2005 through 2007 based on prior filings includes factor to reflect proposed changes in benefits.

~ Using BYNAC selected trend of 0.970 for indemnity and 1.005 for medical.

^ LAE adjusted from historical to current Tennessee factor of 1.203 for projected cost.

Figure 3

STATE OF TENNESSEE WORKERS COMPENSATION

HISTORICAL COST RATIO

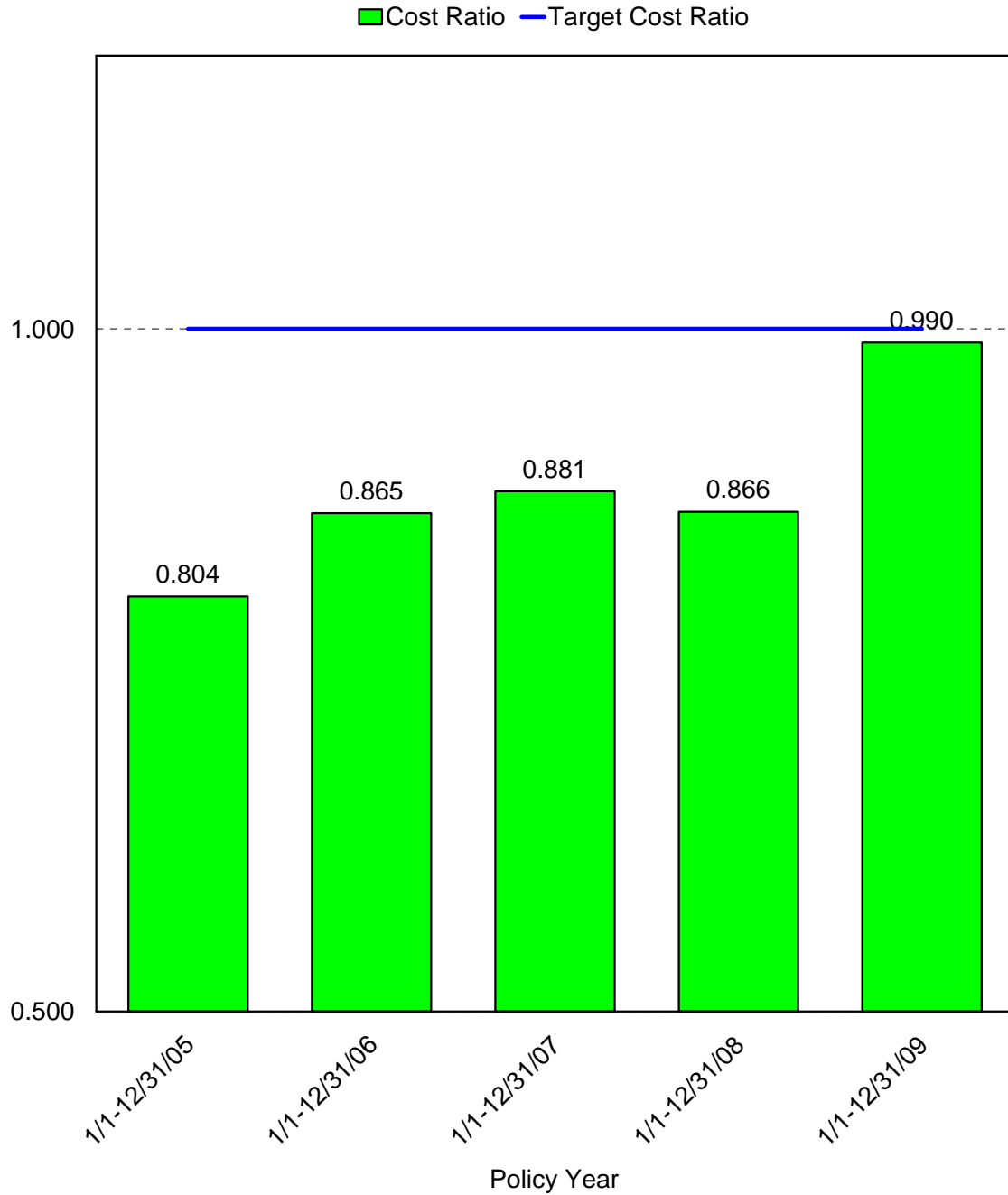
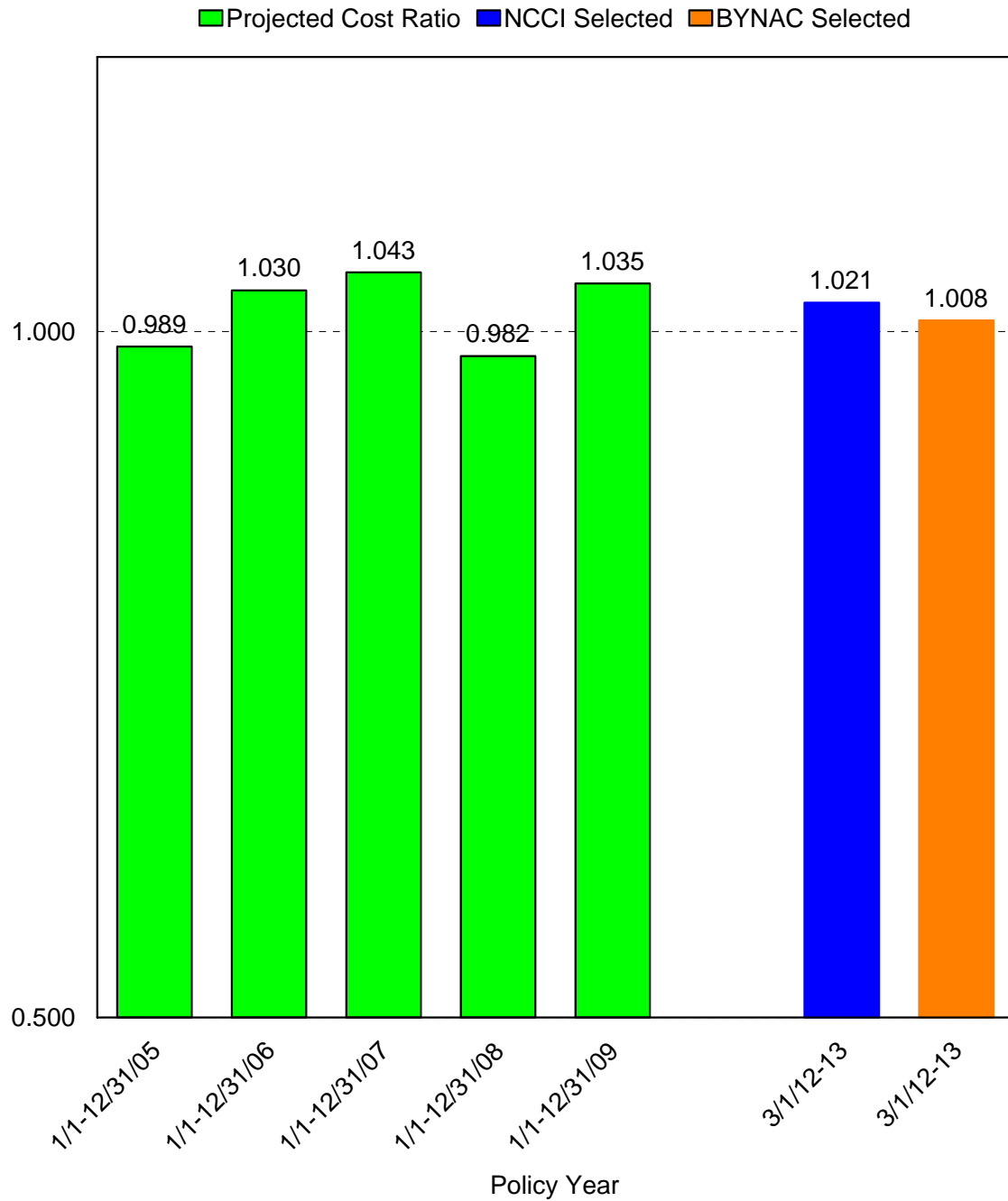


Figure 4

STATE OF TENNESSEE WORKERS COMPENSATION

PROJECTED COST RATIO INCLUDING BENEFIT CHANGES



TREND

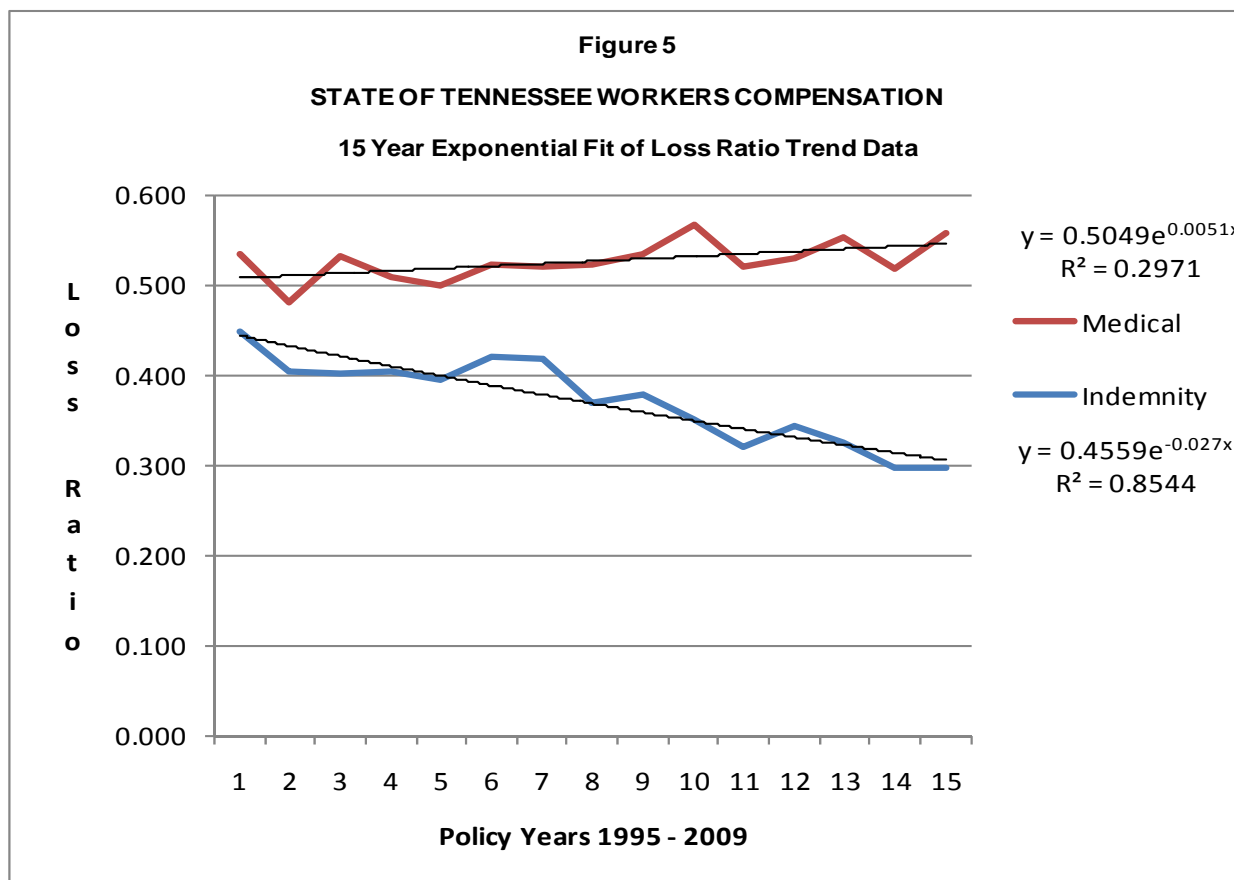
An exponential regression model is used to measure the trend and presented in Table 7 and Figures 5 and 6. The NCCI selected trend factors are similar to the 5 year exponential fit. In the 3/1/11 filing the NCCI selected factor was consistent with the 15 year exponential fit. The indemnity trend has been consistent throughout the period. Medical trend has been very inconsistent and the exponential model provides a poor fit to the data. Due to these inconsistencies, BYNAC believes the 15 year fit should continue to be selected for medical trend in order to provide a larger base of experience. It is BYNAC's opinion that the NCCI proposed change is reasonable but the alternate medical trend should be considered. The alternate medical trend applied to the NCCI adjusted limited medical cost ratio excluding trend and benefits results in an indicated change due to experience, trend, and benefits of 1.008.

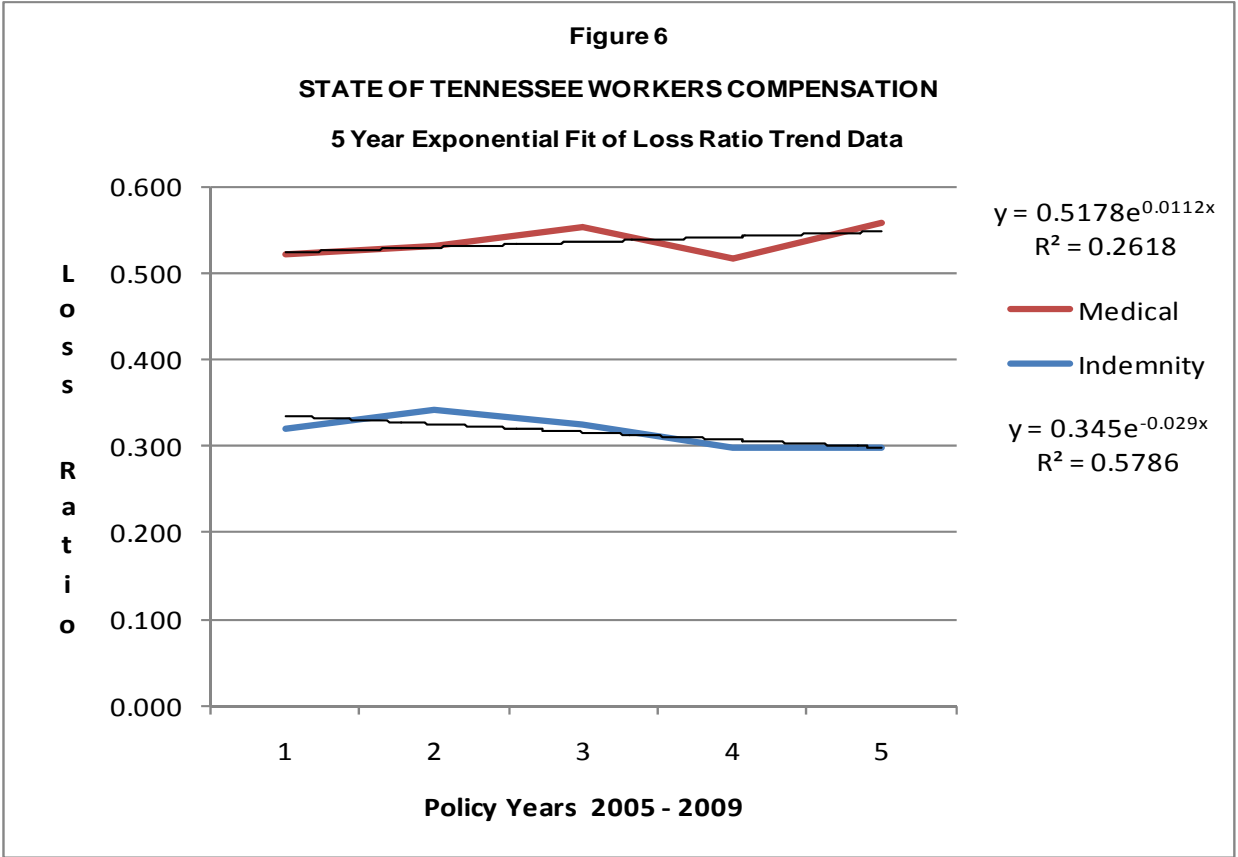
Table 7

**STATE OF TENNESSEE
WORKERS COMPENSATION**

TREND

<u>Policy Year</u>	<u>Indemnity Loss Ratio</u>	<u>Medical Loss Ratio</u>
1995	0.447	0.533
1996	0.403	0.480
1997	0.401	0.532
1998	0.405	0.509
1999	0.394	0.500
2000	0.420	0.522
2001	0.417	0.519
2002	0.369	0.523
2003	0.378	0.535
2004	0.350	0.567
2005	0.321	0.521
2006	0.343	0.530
2007	0.324	0.553
2008	0.298	0.517
2009	0.298	0.558
5 year Exponential	0.971	1.011
8 year Exponential	0.967	1.003
15 year Exponential	0.974	1.005
NCCI Selected	0.970	1.010
BYNAC Selected	0.970	1.005
<u>Accident Year</u>	<u>Indemnity Loss Ratio</u>	<u>Medical Loss Ratio</u>
2006	0.322	0.514
2007	0.333	0.511
2008	0.310	0.572
2009	0.300	0.522
2010	0.290	0.541
5 Year Exponential	0.969	1.012





INDICATED LOSS COSTS BY INDUSTRY GROUP AND CLASS

NCCI updated its methodology to determine class relativities in 2009 and these changes were implemented in Tennessee beginning with the filing effective 3/1/10. The goal of these changes was to improve the equity of loss costs by class and the stability of loss costs for individual class codes. BYNAC has completed a brief review of the proposed loss costs by class but individual calculations have not been checked in detail for accuracy.

Concerns were raised by the consulting actuary at the time of the last review about the changes to the Office & Clerical, Goods & Services, and Miscellaneous industry group differentials. The changes from last year have all been tempered by changes in the opposite direction in this filing. Shown below is a comparison of the changes in industry group differential since the methodology was updated compared to NCCI's predicted change at the time of the update.

Industry Group	Industry Group Differential				
	Eff 3/1/09	Eff 3/1/10	Eff 3/1/11	Eff 3/1/12	
Manufacturing	0.991	1.024	1.027	1.007	
Contracting	1.023	0.954	0.966	0.971	
Office & Clerical	0.979	0.984	0.926	0.965	
Goods & Services	0.965	1.057	1.018	1.037	
Miscellaneous	1.045	0.965	1.021	0.986	
	Percentage Change				NCCI Large State Predicted^
	3/09 to 3/10	3/10 to 3/11	3/11 to 3/12	3/09 to 3/12	
Manufacturing	3.3%	0.3%	-1.9%	1.6%	-5.1%
Contracting	-6.7%	1.3%	0.5%	-5.1%	-1.6%
Office & Clerical	0.5%	-5.9%	4.2%	-1.4%	1.2%
Goods & Services	9.5%	-3.7%	1.9%	7.5%	2.1%
Miscellaneous	-7.7%	5.8%	-3.4%	-5.6%	-0.2%

^ Class Ratemaking for Workers Compensation: NCCI's New Methodology by Tom Daley.

QUALIFICATIONS AND LIMITATIONS

The estimates contained in this report depend upon the following:

- The actuarial assumptions, quantitative analysis, and professional judgment expressed in this report.
- The reliability of loss experience to serve as an indicator of future losses.
- The completeness and accuracy of data provided by NCCI.

Material changes in any of the assumptions or information upon which the findings are based will require a re-evaluation of the results of this report and a possible revision of those findings.

This report is intended for the use of the Tennessee Advisory Council on Workers'

Compensation. If the report is released to any third party, it should be released in its entirety.

Please advise BYNAC if this report is distributed to any other third party.

CONSULTATION

The professional opinion given in this report is based on the judgment and experience of BYNAC. An analysis by another actuary may not arrive at the same conclusion. In the event that another actuary is consulted regarding the findings of this report, both actuaries should make themselves available for supplemental advice and consultation.

TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION

APPENDIX A

SUPPORT EXHIBITS

Appendix A, Exhibit I

**STATE OF TENNESSEE
WORKERS COMPENSATION**

COMPARISON OF 3/1/11 LOSS COST LEVEL CHANGE EXCLUDING AND INCLUDING 8/26/09, 1/1/10, 1/1/11 MEDICAL FEE CHANGES

	Excluding Medical Fee Change [^]	Including Medical Fee Change [*]		
Factor Adjusting 2008 Policy Year Medical Losses to Present Benefit Level	1.006	1.105		
Factor Adjusting 2007 Policy Year Medical Losses to Present Benefit Level	0.980	1.078		
	Excluding Medical Fee Change [^] Policy Year 2008	Including Medical Fee Change [*] Policy Year 2007	Policy Year 2008	Policy Year 2007
Premium Available for Benefits Costs	590,395,960	603,986,349	590,395,960	603,986,349
Projected Indemnity Cost Ratio including Benefit Changes	0.334	0.346	0.334	0.346
Medical Benefit Cost	275,345,279	309,612,499	275,345,279	309,612,499
Medical On-level Factor	1.006	0.980	1.105	1.078
Factor to Include Loss-based Expenses	1.199	1.199	1.199	1.199
Composite Adjustment Factor	1.206	1.175	1.325	1.293
Adjusted Limited Medical Losses	332,066,406	363,794,686	364,832,495	400,328,961
Adjusted Limited Medical Cost Ratio excluding Trend and Benefits	0.562	0.602	0.618	0.663
Factor to Reflect Medical Trend	1.016	1.021	1.016	1.021
Projected Limited Medical Cost Ratio	0.571	0.615	0.628	0.677
Factor to Adjust Medical Cost Ratio to an Unlimited Basis	1.021	1.021	1.021	1.021
Projected Medical Cost Ratio	0.583	0.628	0.641	0.691
Factor to Reflect Proposed Changes in Medical Benefits	1.000	1.000	1.000	1.000
Projected Medical Cost Ratio including Benefit Changes	0.583	0.628	0.641	0.691
Total Benefit Cost	0.917	0.974	0.975	1.037
Indicated Loss Cost Level Change	0.946		1.006	
Effect of Change in Loss Based Expenses	1.003		1.003	
Indicated Change Modified to Reflect Change in Loss Based Expenses	0.949		1.009	
Overall	-5.1%		0.9%	
3/1/11 Loss Cost Level Change	0.949		1.009	
11/1/11 Loss Cost Level Change	1.063		1.000	
Combined Loss Cost Level Change	1.009		1.009	

[^] From 3/1/11 Voluntary Loss Cost Filing

^{*} Estimated using 11/1/11 Voluntary Loss Cost Filing

Appendix A, Exhibit II

**STATE OF TENNESSEE
WORKERS COMPENSATION**

INDICATED LOSS COST LEVEL CHANGE USING BYNAC TREND SELECTION

	<u>NCCI Selected</u>	<u>BYNAC Selected</u>		
Factor Adjusting 2009 Policy Year Medical Losses to Reflect Trend	1.033	1.021		
Factor Adjusting 2008 Policy Year Medical Losses to Reflect Trend	1.043	1.016		
	<u>NCCI Selected</u>		<u>BYNAC Selected</u>	
	<u>Policy Year 2009</u>	<u>Policy Year 2008</u>	<u>Policy Year 2009</u>	<u>Policy Year 2008</u>
Premium Available for Benefits Costs	536,313,905	574,879,145	536,313,905	574,879,145
Projected Indemnity Cost Ratio including Benefit Changes	0.338	0.329	0.338	0.329
Medical Benefit Cost	281,231,118	269,094,723	281,231,118	269,094,723
Medical On-level Factor	1.064	1.105	1.064	1.105
Factor to Include Loss-based Expenses	1.203	1.203	1.203	1.203
Composite Adjustment Factor	1.280	1.329	1.280	1.329
Adjusted Limited Medical Losses	359,975,831	357,626,887	359,975,831	357,626,887
Adjusted Limited Medical Cost Ratio excluding Trend and Benefits	0.671	0.622	0.671	0.622
Factor to Reflect Medical Trend	1.033	1.043	1.021	1.016
Projected Limited Medical Cost Ratio	0.693	0.649	0.685	0.632
Factor to Adjust Medical Cost Ratio to an Unlimited Basis	1.024	1.024	1.024	1.024
Projected Medical Cost Ratio	0.710	0.665	0.701	0.647
Factor to Reflect Proposed Changes in Medical Benefits	1.000	1.000	1.000	1.000
Projected Medical Cost Ratio including Benefit Changes	0.710	0.665	0.701	0.647
Total Benefit Cost	1.048	0.994	1.039	0.976
Indicated Loss Cost Level Change	1.021		1.008	
Effect of Change in Loss Based Expenses	0.995		0.995	
Indicated Change Modified to Reflect Change in Loss Based Expenses	1.016		1.003	
Overall	1.6%		0.3%	

TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION

APPENDIX B

BYNAC QUESTIONS AND RESPONSES FROM NCCI

**Tennessee Voluntary Market Advisory Loss Cost Filings
Proposed to Be Effective 11/1/2011 (Law-Only) and 3/1/2012**

From: Mary Jean King, Consulting Actuary, Tennessee Workers Compensation Advisory Council
Email dated 9/6/11

- Copies of prior loss cost filings effective 3/1/11, 3/1/10, 3/1/09, and 7/1/08 (including technical supplements).

Response: Please see the attached ZIP file that contains PDF copies of the requested filings. Please note that the Technical Supplement files contain proprietary and confidential information.

- Background information concerning why the medical fee schedule changes effective 8/26/09 and 1/1/10 were not included in the 3/1/11 loss cost filing and information concerning any proposed or approved medical fee schedule changes effective after 1/1/11.

Response: At the time NCCI prepared the 3/1/11 loss cost filing, the changes to the Tennessee medical fee schedule effective 8/26/09 had not been communicated to NCCI. At that time, NCCI was aware of several proposed changes to the fee schedule, but was not made aware of the actual changes implemented. Therefore, NCCI was also unable to incorporate the impact of the update to the fee schedule effective 1/1/10 in the 3/1/11 filing.

- Additional technical information concerning the distributions used in estimating the cost impact of the medical fee schedule changes. I am assuming that these are frequency distributions. The distributions shown on pages 3, 7, and 13 are all footnoted as being based on service year 2009 data – is this the only year that is available? What accounts for the changes in the distribution?

Response: Service Year 2009 is the most recent year available. The distributions shown on pages 3, 7, and 13 are based on the number of records (by procedure) times the corresponding maximum allowable reimbursement (MAR) in place prior to the fee schedule change. Since the MARs change with each successive change or update to the fee schedule, the resulting distributions also change.

- Information showing the medical fee schedules prior to 8/26/09 and as of 8/26/09, 1/1/10, and 1/1/11.

Response: The maximum allowable reimbursement under the fee schedule varies by procedure code. Based on our phone conversation this morning, my understanding is that you are not requesting that level of detail at this time. Below is a link to information on the Tennessee medical fee schedule from the TN Department of Labor and Workforce Development. A table on pages 19-20 shows the conversion factors in place in Tennessee for the various time periods. If you need any additional information, please let me know.

http://www.tn.gov/labor-wfd/wc_medfeebook.pdf

Tennessee Voluntary Market Advisory Loss Cost Filings
Proposed to Be Effective 11/1/2011 (Law-Only) and 3/1/2012
Interrogatories – Part 1

From: Mary Jean King, Consulting Actuary, Tennessee Workers Compensation Advisory Council

Date Received: 9/8/2011

Date Responded: 9/8/2011

11/1/2011 Law-Only Filing

- 1) Have you examined the sensitivity of the rate change to the 40% Offset assumption? What would be the effect of the 1/1/10 and 1/1/11 changes using offsets of 30% and 50%?**

Response:

The overall impacts are not sensitive to the utilization offset assumption. Using offsets of either 30% or 50%, the impact due to the 1/1/2010 and 1/1/2011 fee schedule updates would be unchanged.

- 2) Why did Physician Costs as a percentage of Medical Costs in Tennessee decrease from 45.4% in the 8/26/09 change to 44.7% in the 1/1/10 change when physician costs increased as a result of the 8/26/09 change?**

Response:

Tennessee physician costs actually represent 48.0% of total medical costs (based on service year 2009 data). We then account for the percentage of physician costs actually subject to the physician fee schedule in Tennessee.

For example, for the 8/26/2009 fee schedule, 94.6% of physician costs were subject to the physician fee schedule. That is, 94.6% of payments to physicians in 2009 resulted from procedures which had a Maximum Allowable Reimbursement (MAR) listed under the 8/26/2009 fee schedule. The remaining 5.4% of physician payments resulted from procedures for which no MAR was listed in the fee schedule. The payments for these procedures are reimbursed at Usual and Customary Charges (UCR), and NCCI assumes that these procedures are not impacted by the 8/26/2009 fee schedule changes. Therefore, physician costs subject to the 8/26/2009 fee schedule are 45.4% ($=48.0\% \times 94.6\%$) of total medical costs in Tennessee.

Similarly, 93.2% of payments to physicians in 2009 resulted from procedures subject to the 1/1/2010 physician fee schedule, so the physician costs subject to the fee schedule are 44.7% ($=48.0\% \times 93.2\%$) of total medical costs.

3/1/2012 Loss Cost Filing

- 1) Were any concerns raised in the NCCI internal data validation process for the data used in this filing?**

Response:

Tennessee Voluntary Market Advisory Loss Cost Filings
Proposed to Be Effective 11/1/2011 (Law-Only) and 3/1/2012
Interrogatories – Part 1

Within NCCI, both the Data and Actuarial divisions employ various processes and programs to ensure that data is reported accurately and in accordance with the Workers Compensation Statistical Plan (for data used in the class ratemaking analysis) and the Financial Call Reporting Guidebook (for data used in the aggregate loss cost level indication). The extensive processes used by NCCI to verify data used in the filing include identifying outliers for further scrutiny and modifying the data when appropriate and necessary.

The data contained in the proposed 3/1/2012 Tennessee filing has been carefully edited using actuarial edits and judgment and any significant issues that NCCI has identified within the data have been communicated and confirmed with the data providers in order to make the data fit for use. For the data used in this filing, there currently exist no outstanding concerns of material impact.

- 2) Would it be possible for you to provide standard earned premium , limited paid losses (showing indemnity and medical separately), and limited paid + case losses (indemnity and medical separate) for Policy Years 2005 – 2009 valued as of 12/31/10? (Only the limited paid losses would be needed for Policy Years 2008 and 2009 as the other information is in the filing).**

Response:

The requested data is displayed in the table below. Please note that the premium and limited losses are valued as of 12/31/2010 and are prior to adjustments to bring the data to the ultimate, on-level projected value.

Policy Year	Standard Earned Premium	Limited Paid Losses		Limited Paid + Case Losses	
		Indemnity	Medical	Indemnity	Medical
2005	\$648,451,564	\$159,254,331	\$169,764,517	\$166,692,296	\$209,103,902
2006	\$664,030,353	\$175,908,373	\$169,275,469	\$189,249,710	\$216,607,053
2007	\$695,689,743	\$160,229,803	\$175,652,066	\$185,722,833	\$228,815,005
2008	\$624,137,309	\$115,745,122	\$144,025,902	\$155,462,696	\$194,012,057
2009	\$548,905,804	\$61,842,476	\$117,255,503	\$124,938,422	\$194,086,348

- 3) Were any other methods used to estimate ultimate losses for Policy Years 2008 and 2009? If so, what was the range of these estimates?**

Response:

In this filing in Tennessee, NCCI estimated ultimate losses by developing limited paid losses plus case reserves. This method is consistent with the past several filings NCCI has made in Tennessee, and no other method was used to estimate the ultimate losses in the filing. While limited paid loss experience and development factors are available, it is our determination that

Tennessee Voluntary Market Advisory Loss Cost Filings
Proposed to Be Effective 11/1/2011 (Law-Only) and 3/1/2012
Interrogatories – Part 1

the paid plus case loss development method employed represents our best estimate of ultimate losses.

- 4) It's my understanding that the on level factor weights are based on a countrywide distribution of policy effective dates – is that correct? Why did the 2008 Policy Year weights shown on pages 9 and 10 of the technical supplement change from the weights used in the 3/1/11 filing?**

Response:

The weights used in the on-level factor calculations are based on a Tennessee-specific distribution of premium by policy effective month. NCCI updates the state-specific monthly premium distributions used in our filings periodically (typically, every one to two years) to reflect the latest data available.

- 5) It seems like the Indemnity Likely to Develop and Not Likely to Develop development factors may be converging. Is this something you are seeing countrywide? Is there any concern that the rules being used to separate the losses are not as predictive as was first thought? Can you provide the four development triangles?**

Response is forthcoming.

Tennessee Voluntary Market Advisory Loss Cost Filings
Proposed to Be Effective 11/1/2011 (Law-Only) and 3/1/2012
Interrogatories – Part 2

From: Mary Jean King, Consulting Actuary, Tennessee Workers Compensation Advisory Council

Date Received: 9/8/2011

Date Responded: 9/12/2011

3/1/2012 Loss Cost Filing

- 5) It seems like the Indemnity Likely to Develop and Not Likely to Develop development factors may be converging. Is this something you are seeing countrywide? Is there any concern that the rules being used to separate the losses are not as predictive as was first thought? Can you provide the four development triangles?**

Response:

We reviewed the indemnity development triangles for other states and found no evidence that would suggest there is a countrywide trend for convergence between the likely and not-likely development factors.

Attached are the likely and not-likely development triangles for the Tennessee 3-1-2012 filing. Note that the Not-Likely 1:2 link ratio for the 6/06-5/07 period and the 2:3 link ratio for the 6/05-5/06 period are both a little higher than what was seen in prior policy periods and the likely 1:2 link ratio for the 6/07-5/08 period is slightly lower than previously seen. However, there is still a significant difference between the likely and not likely development factors that are applied, particularly at early reports.

Likely

000112

1st report end: 51200

PY Data	1st report	2nd report	rd report	th report	th report	th report	th report
							0
						0	0
					0	0	0
000001							
000001				1,2,2	1,25,2	1,0,5	1,0,252,02
010002			152,1,000	15,2,555	1,0,25,51	1,1,50,000	1,1,155,10
02000		1,0,2,000	1,0,0,1,000	15,2,0,000	15,1,0,100	15,0,0,000	15,1,110,000
00000	101,1,1,000	1,0,0,550	1,0,0,510	1,0,0,0,000	150,01,0,000	150,010,000	
00000	00,0,100	11,121,510	1,0,2,0,5	1,5,1,1,12	1,2,2,500		
00000	100,0,0,10	1,0,5,100	1,0,0,500	1,51,0,5			
00000	10,510,000	1,0,05,000	1,5,5,500				
00000	0,5,200	125,000,500					
00000	0,1,1,000						

ink ratios	1:2	2:3	3:4	4:5	5:6	6:7
00000000						
00000001	0000	0000	0000	1.00	1.00	0.00
00100002	0000	0000	1.00	1.01	1.00	0.00
00200003	0000	1.00	1.00	1.012	1.002	1.00
00300004	1.015	1.005	1.00	1.00	1.000	
00400005	1.01	1.112	1.00	1.010		
00500006	1.00	1.10	1.00			
00600007	1.01	1.005				
00700008	1.20					

MTD DMTY

DPMT

Not-Likely

Tennessee

00112

1st report start: 1200
1st report end: 51200

PY Data	1st report	2nd report	rd report	th report	th report	th report	th report
00							
0001				212,1,52	211,2,00	212,15,5	212,5,00
0102			1,2,0	200,0,0	202,0,5	20,0,1,5	20,0,0,2
0200		15,00,011	20,00,00	20,0,2,0	211,050,20	211,50,2	211,00,0
0000	15,1,0	1,51,02	1,0,1,21	1,50,5	1,5,01	1,0,0,22	
0000	1,0,0,25	15,00,01	1,2,0,0	1,0,2,01	1,0,0,22		
0000	1,0,5,0	1,1,5,15	1,5,5,12	1,2,1,20			
0000	15,215,21	1,0,0,01	15,00,00				
0000	15,0,0,55	1,0,0,50					
0000	1,0,1,5						

Link ratios	1:2	2:	:	:	:	:
00						
0001				0,00	1,00	1,001
0102			1,020	1,00	1,005	1,001
0200		1,02	1,02	1,010	1,002	1,002
0000	1,1	1,052	1,01	1,011	1,002	
0000	1,15	1,05	1,02	1,021		
0000	1,15	1,02	1,02			
0000	1,1	1,05				
0000	1,15					

Tennessee Voluntary Market Advisory Loss Cost Filings
Proposed to Be Effective 11/1/2011 (Law-Only) and 3/1/2012
Interrogatories – Part 3

From: Mary Jean King, Consulting Actuary, Tennessee Workers Compensation Advisory Council

Date Received: 9/14/2011

Date Responded: 9/15/2011

3/1/2012 Loss Cost Filing

- 1) Are reductions in the Countrywide Accident Year Developed LAE ratios due to less than expected development?**

Response:

Yes, countrywide accident year developed LAE ratios for accident years 2006 through 2009 decreased from last year's analysis primarily due to lower than expected development in the DCCE and AOE ratios to loss.

- 2) What calendar years were used in the Tennessee DCCE relativity? Why not just use the Tennessee data?**

Response:

The Tennessee DCCE relativity was calculated based on calendar years 2006-2010. NCCI's standard method would use the indicated DCCE relativity for Tennessee to adjust the countrywide DCCE ratio. In Tennessee, we are proposing (as we did in last year's filing) to use the countrywide DCCE ratio without the relativity adjustment (or, equivalently, to use a selected relativity of 1.000). The rationale for this selection is related to the 2004 reforms that affected the loss payout pattern, particularly for medical benefits. We have observed increases in the Tennessee relativity every year since the reform until calendar year 2010. Therefore, we have elected to include the countrywide LAE provision in the Tennessee loss costs until the relativity method produces more stable results for Tennessee.

It should also be noted that in many states where NCCI uses this method, the paid DCCE ratio in the state varies more significantly from the countrywide average; that is, the relativity is significantly farther from 1.000 than in Tennessee. In comparison with other states, the Tennessee calendar year paid DCCE to paid loss ratio has been relatively close to the countrywide average (within 0.4% since 2006).

- 3) Is it fair to say that some information presented but not used in past filings has been eliminated from this filing to make the exhibits clearer? This question pertains to the LAE and Trend exhibits.**

Response:

Tennessee Voluntary Market Advisory Loss Cost Filings
Proposed to Be Effective 11/1/2011 (Law-Only) and 3/1/2012
Interrogatories – Part 3

Yes, in order to more clearly illustrate how selections were made and calculations performed, NCCI did eliminate some extraneous information from the filing exhibits. Information removed did not factor into the selections made in this year's filing.

- 4) Based on our phone discussion, it is my understanding that sections 3, 4, 5, and 6 of HB 1503 involve rolling back the medical settlement practices enacted in 2004. Couldn't the paid development be used to help measure the effect of HB 1503? Although the effect may not be completely measurable at this time, based on my analysis of the paid data it seems like the enactment of HB 3531 in 2004 had a substantial positive effect on medical costs. Was any consideration given to the HB 1503 changes in the selection of the proposed rate change?**

Response:

The portion of HB 3531 that delayed closure of future medical benefits until at least three years after the settlement of indemnity benefits was effective for injuries occurring on or after July 1, 2004. Policy year 2004 (which is only partially affected by the reform) is six years old as of 12/31/2010. Taking into account the healing period, the time until indemnity benefits are settled (would be case-dependent) and the three-year statutory requirement, it is possible that the paid medical loss data reported for policy year 2004 as of 12/31/2010 still does not include a substantial number of permanent disability claims with future medical expenses closed.

Therefore, I would agree that the effect is not completely measurable at this time.

It is also important to note that HB 3531 included many other reform provisions that may have had compounding or offsetting impacts. For example, NCCI estimates that medical costs were reduced by at least 11.5% due to the implementation of the medical fee schedule in 2005. Additionally, the reform implemented mandatory benefit review conferences which may have increased the rate at which benefits are paid out. The many changes included in the reform, as well as the impact of other external factors (e.g. Medicare set-asides) would make it difficult to isolate the impact of the changes to settling future medical expenses.

As stated in Appendix C-II, NCCI is unable to measure the impact of HB 1503, and any resulting impact will flow through the experience that is used in future loss cost filings. The HB 1503 changes to medical settlement rules were considered in our determination that paid plus case loss development best represents our estimate of future ultimate losses. Beyond that, no explicit impact of the law change is reflected in the filing.

- 5) Did you reflect any impact from the economy, health care reform, and Medicare set asides in the filing (this is alluded to in the discussion of HB 1503)? If so, how and if not, why not?**

Response:

Tennessee Voluntary Market Advisory Loss Cost Filings
Proposed to Be Effective 11/1/2011 (Law-Only) and 3/1/2012
Interrogatories – Part 3

There is no explicit impact reflected in the filing for the economy, health care reform, or Medicare set asides. Below is some additional information regarding these topics.

Economy

The state of the economy was considered when selecting loss ratio trends for this filing. NCCI anticipates that although the economic recovery remains sluggish, future job growth and changes in industry mix may place upward pressure on claim frequency. Meanwhile, slow growth in average wages is likely to keep average indemnity costs in check. Conversely, high medical care inflation will continue to put upward pressure on the average medical cost for workers compensation claims.

NCCI's latest *Gauging the Economy* newsletter examines the current state of the economy and the implications for workers compensation insurance. The newsletter can be found on our website at the link below:

https://www.ncci.com/nccimain/IndustryInformation/ResearchOutlook/ResearchNewsletters/Pages/Gauging_Eco_News_Jul-11.aspx

Health Care Reform

NCCI's 2010 report *National Health Care and Workers Compensation* outlines some of the potential direct and indirect effects that health care reform might have for the workers compensation insurance market – as well as some longer term items that the industry will need to keep an eye on. As noted in this report, the overall magnitude and direction of the impacts are not currently measurable, due to the following:

- The details of implementation are not currently known, and may take several years to be enacted
- There are potentially offsetting impacts
- The ultimate impacts depend on behavioral changes and actions by claimants, attorneys, healthcare providers, insurers, and regulators

The full report can be found on our website at the link below:

<https://www.ncci.com/nccimain/industryinformation/regulatoryactivities/pages/nationalhealthandwc.aspx>

Medicare Set-Asides (MSAs)

The future impact of MSAs on workers compensation costs in Tennessee is not measurable because the detailed information regarding MSA amounts and administrative costs is not currently available. To the extent that the losses and historical development pattern used in this filing already include some MSA activity, the filing does implicitly reflect the impact on observed loss experience to this point in time.

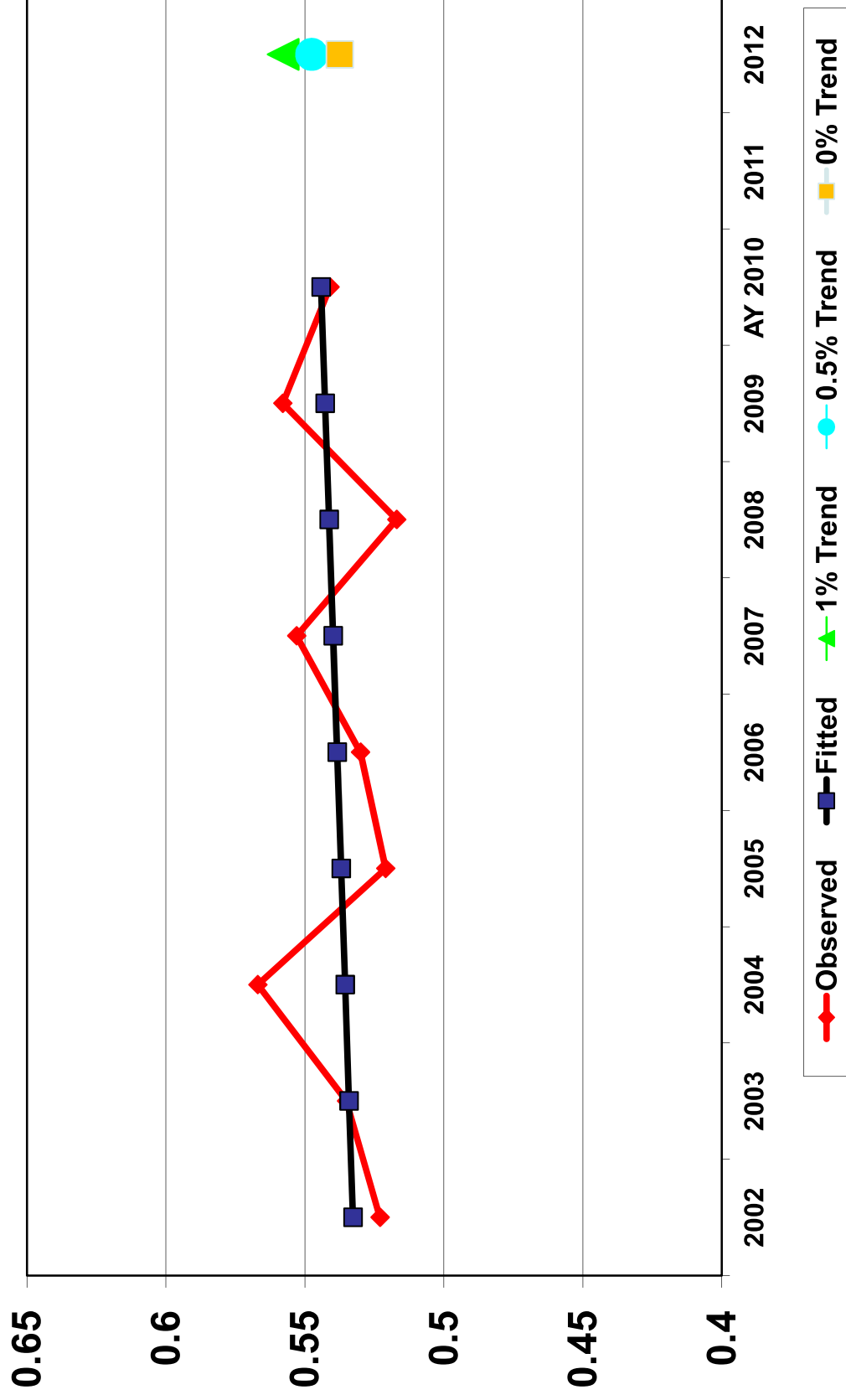
Introduction

- SAS reviewed NCCI filing on behalf of Dept. of Commerce and Insurance, and found the filing to be actuarially sound.
- Two areas where we might have selected differently:
 - Medical loss ratio trend
 - Provision for LAE
- One area we have commented on in the past:
 - Loss Development Factors
- Note law only and technical filings
- Range of Reasonable estimates is 0% to +1.6%
 - Filed change of +1.6% is at the upper end of this range.

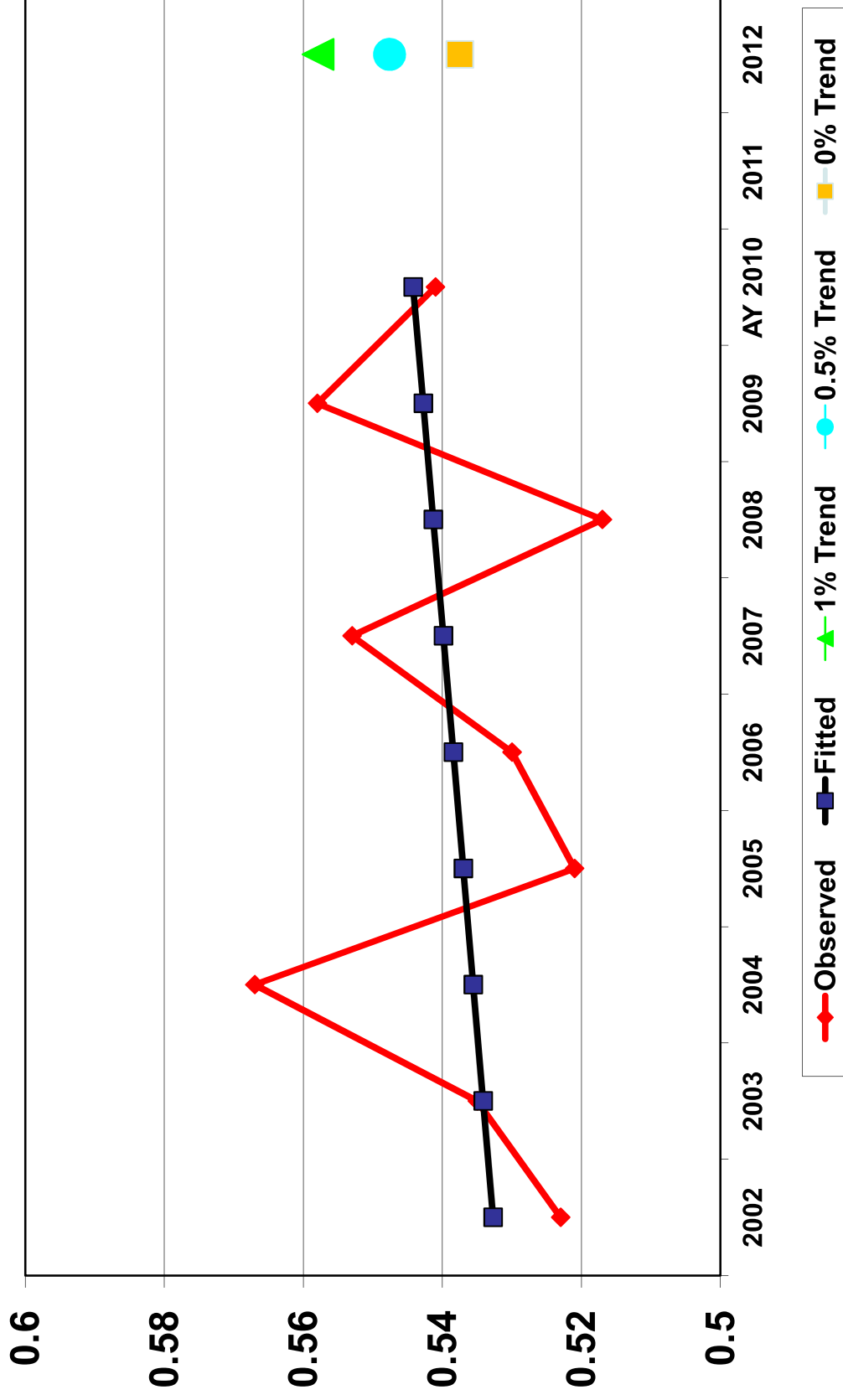
Loss Ratio Trends

- Frequency (claims per \$1 payroll) has been decreasing
 - But 2009 is up over 2008
- Indemnity claim sizes increase more slowly than wages while medical claims increase more quickly
 - Results in overall decreasing loss ratios for indemnity but increasing loss ratios for medical claims
 - Long term trend (8 years) is -3.3% for indemnity and +0.3% for medical
- We concur with NCCI selection for indemnity (3%) but believe that 1.0% medical selection may be high
 - Using 0.5% medical loss ratio trend results in an indicated change of +0.2% (rather than +1.6%).

Medical Loss Ratio History

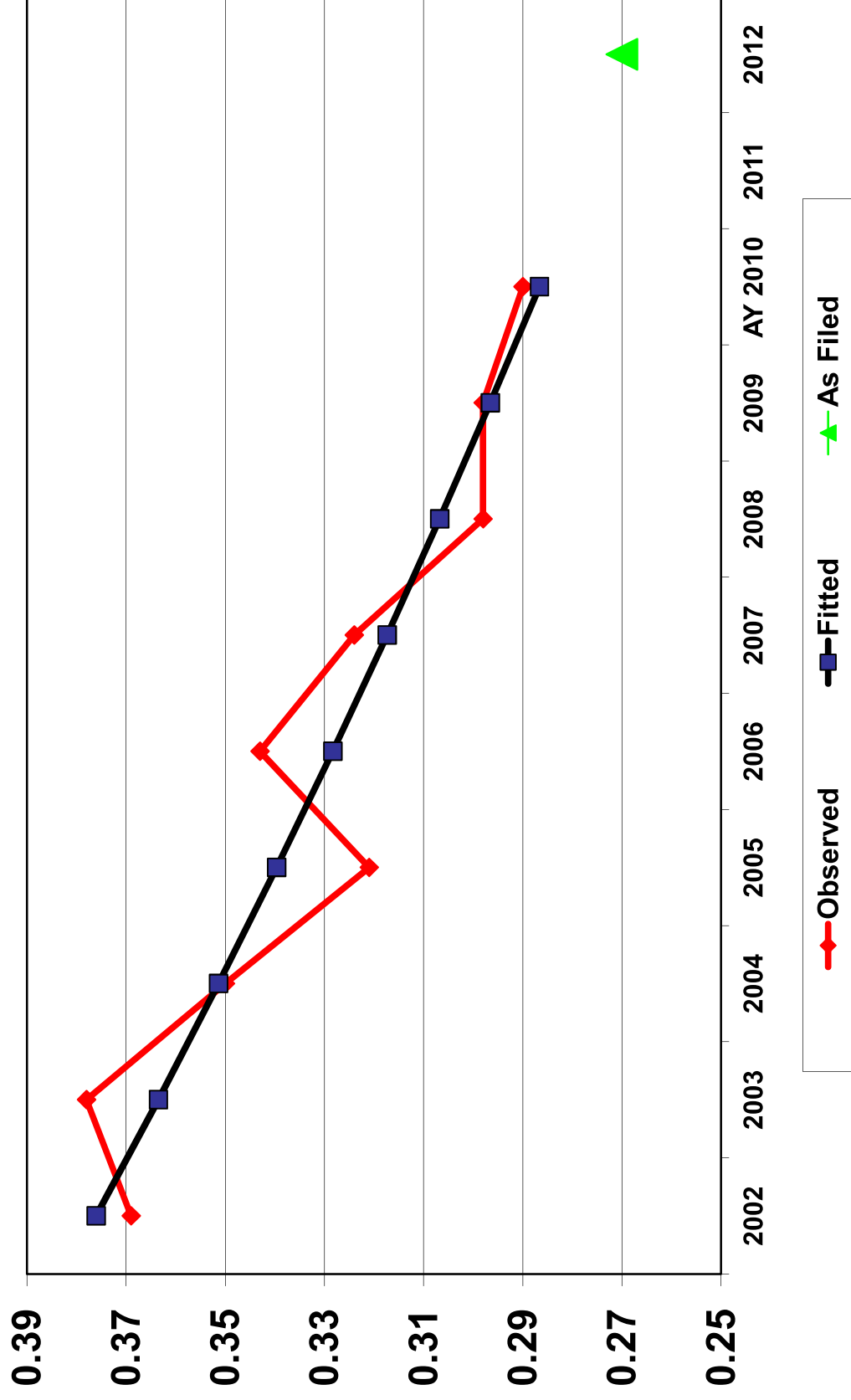


Medical Loss Ratio History: Larger Scale



Select Actuarial Services

Indemnity Loss Ratio History

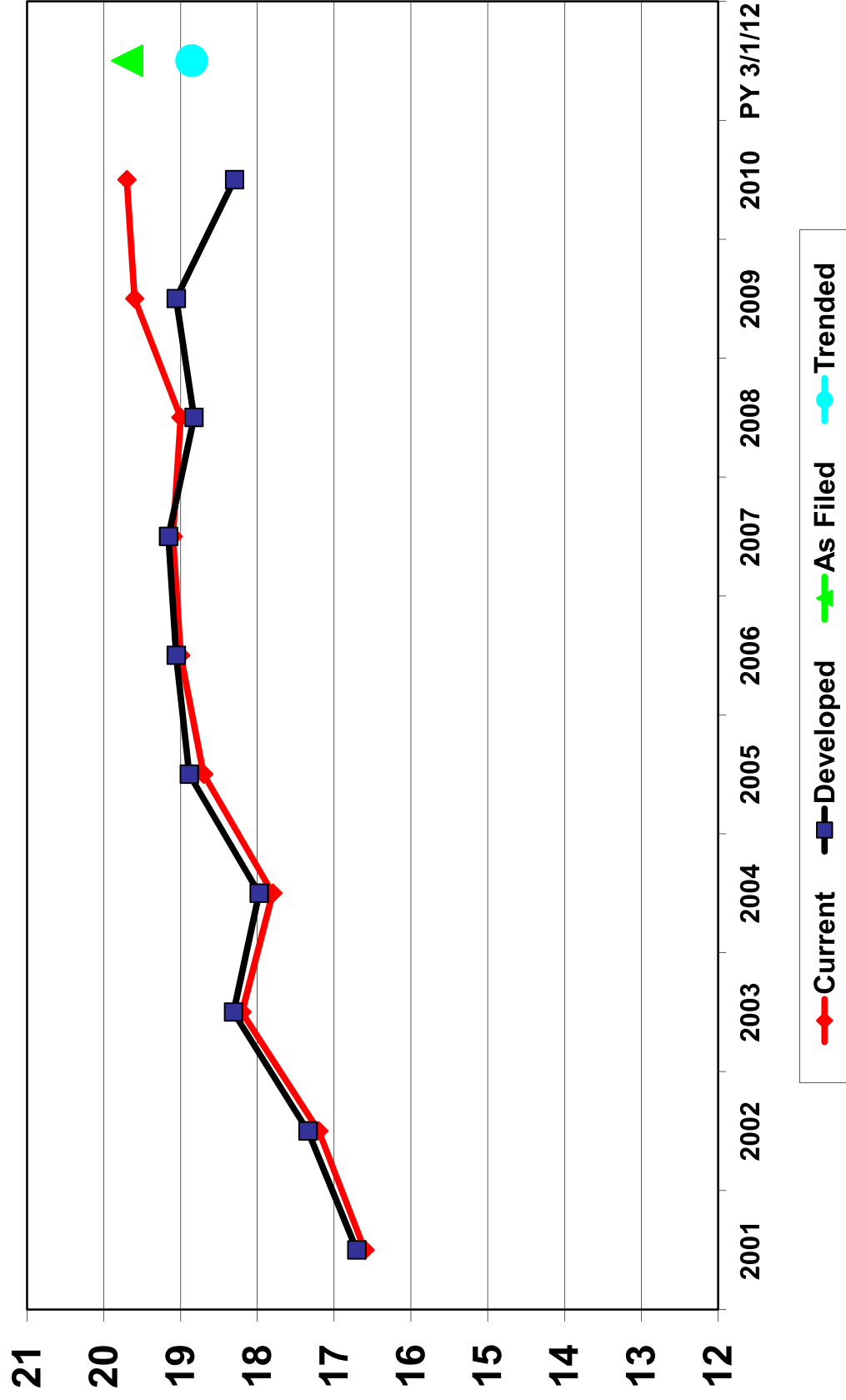


Select Actuarial Services

LAE to Loss Ratio

- NCCI estimates of the ultimate LAE to loss ratio develop downward over time
 - Well documented in our review of the 2011 filing
 - Development over the past year consistent with prior years
 - Conclusion: Ratios shown in the filing for the latest two or three years are overstated – materially for 2009 and 2010
- Last year's filing data showed evidence of an upward trend in the ratios even after correction for development
 - Current filing does not show trend in the latest five years
 - After correction for development, 2005-2009 very stable around 19%
 - We recommend consideration of 19% load rather than 19.7% load
 - Reduces indication to +0.9%

Accident Year LAE Ratios



Other Observations

- Changes in frequency trend and return to increasing medical costs cause for concern
 - Should not be overly responsive, but would argue against any selected decrease in the rates
- Loss Development Ratios
 - Latest year very close to the 5 year average at most maturities
 - Continued use of 5 year average is appropriate
- Law Only and Technical filings in 2011
 - Law Only filing effective 11/1/11 captures past changes in medical fee schedules going back to 2009 and is appropriate
 - NCCI has also changed experience mod and retro calculations that were long overdue for updates

Conclusion

- The selected Medical Trend of 1.0% is not unreasonable, but is more likely to be on high side than not.
Changing Med Trend to 0.5% produces indication of +0.2%
Changing Med Trend to 0.0% produces indication of -1.0%
Changing LAE provision to 19% produces indication of +0.9%
- NCCI should adjust is calculation of LAE ratio to reflect downward development and adjust for trend if applicable
- Range of reasonable estimates of indication is from 0% to +1.6%

Tennessee Workers' Compensation Data

Calendar Years 2001–2010



A Report of Statewide Data for the Tennessee Advisory Council on Workers' Compensation

September, 2011

Tennessee Workers' Compensation Data

Calendar Years 2001–2010



A Report of Statewide Data for the Tennessee Advisory Council on Workers' Compensation

September, 2011

David Wilstermann

Statistical Report:
Tennessee Workers' Compensation Data: 2001-2010
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Table 20

Permanent Partial Disability Percentage 20

Table 20

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Table 20

Permanent Partial Disability Monetary Amounts 20

Table 20

Medical Benefits/Expenses 20

Table 21

Arm Injuries - Employee Did Not Return To Pre-Injury Employment

Permanent Partial Impairment Ratings 20

Table 22

Permanent Partial Disability Percentage 20

Table 22

Permanent Partial Disability Multipliers 20

Table 22

Permanent Partial Disability Monetary Amounts 20

Table 25

Medical Benefits/Expenses 20

Table 22

Leg Injuries – Employee Returned To Pre-Injury Employment

Permanent Partial Impairment Ratings 2

Table 2

Permanent Partial Disability Percentage 2

Table 2

Permanent Partial Disability Multipliers 2

Table 2

Permanent Partial Disability Monetary Amounts 2

Table 2

Medical Benefits/Expenses 2

Table 2

Leg Injuries – Employee Did Not Return To Pre-Injury Employment

Permanent Partial Impairment Ratings 5

Table 5

Permanent Partial Disability Percentage 5

Table 5

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Introduction

The Tennessee Advisory Council on Workers' Compensation has been benchmarking the workers' compensation system using data from the Tennessee Department of Labor and Workforce Development dating back to calendar year 2000. This report presents ten years of statewide data from 2001 to 2010. Contained in the following pages are data background information, conclusion type information, case length information, injured worker demographics and temporary and permanent disability information. A statistical supplement containing judicial district information will be produced separately. Included in this report is the addition of tables that display the percent of body as a whole, arm and leg injury cases where the injured workers were and were not returned to pre injury employment. These are the largest numbers of cases and also represent the largest number of weeks of permanent partial disability benefits. Providing a snapshot of the percent of these types of cases is another tool to aid in monitoring potential changes in the Tennessee workers' compensation system. Appendix A provides graphs of the mean and median amounts for the tables discussed throughout the main body of the report.

As noted in previous reports, House Bill 511/Senate Bill 222 (referred to as the 2001 workers' compensation reforms) brought significant changes to Tennessee's workers' compensation system. The changes that could potentially impact the system as reflected in the data presented in this report are highlighted below.

Mandatory Mediation

No claim is to be filed in court until the parties have exhausted the benefit review conference process, unless the parties have agreed to settle prior to the benefit review conference taking place (effective 1/1/2005).

Temporary Total Disability Benefits

The maximum benefit amount was increased to 105% of the State's Average Weekly Wage (SAWW) effective 1/1/2001 and to 110% of the SAWW as of 1/1/2005.

Medical Benefits Expenses

Effective 1/1/2001, future medical benefits cannot be closed at the time of trial or settlement for body as a whole injuries and scheduled member injuries of 200 weeks or greater. Parties can agree to settle future medical benefits after three years from the time of trial or settlement approval. In addition to medical benefits remaining open for at least three years, a medical fee schedule was implemented on 1/1/2005.

Permanent Partial Disability Benefit Expenses

The cap on permanent partial disability benefits for injured workers who return to work for their pre-injury employer at the same or higher wage was reduced from 2.5 times the impairment rating to 1.5 times the impairment rating. This became effective 1/1/2001 and is for body as a whole and scheduled member injuries of 200 weeks or more.

Now having six years of post reform act case history, the changes made in 2001 are being reflected in the data. Specifically

- Trials are utilized as a method of concluding cases in 1.1% of cases in 2010 and have been as low as 0.1% of cases since the implementation of mandatory mediation.
- The percent of cases that were settlements approved by the Department of Labor and Workforce Development remains around 10%, but were utilized less than 10% of the time prior to the passage of the 2001 reforms.
- Both the length and the amount of temporary total disability benefits continue to increase. For 2010, benefits were paid for an average of 21.2 weeks. This is an eight week increase over 2001.
- Post reform medical benefits expenses leveled off after years of annual increases pre reform. For 2010 medical benefits

expenses are beginning to either show signs of increasing or year to year variation.

- Permanent Partial Disability benefits paid for when an injured worker returns to work continue to decrease, especially in cases where the injured worker was returned to pre injury employment.
- After years of post reform increases, the relative percent of trials appealed decreased

The remainder of this report delineates these changes in greater detail. While it is possible to infer systemic changes, the primary function of this report is to be a snapshot of the Tennessee workers' compensation system from year to year.

This statistical report is possible because the General Assembly, in 1991, enacted Tennessee Code Annotated §50-2-201 that established a method by which workers' compensation data specific to each Tennessee claim is to be reported to the Department of Labor and Workforce Development (hereinafter, "Department"). The statute requires the parties to complete and file a statistical data form (SD-1) at the conclusion of a case, contemporaneously with the final order or, if the settlement is approved by the Department, at the time the settlement is approved.

After the statistical data forms are received by the Department, the data from the individual forms are entered into the integrated workers' compensation computer system. The Department provided the Advisory Council with data from the database. It is from this database that the following statistics were developed. The number of cases will vary from chart to chart. This is because the statewide figures reported are calculated with the data available in the Department's database, which is dependant on the degree to which the SD-1 forms are fully completed. In other words, all data listed on the forms sent in are entered into the database, but not all fields on the filed SD-1 forms are fully complete.

The following is the compilation of statistics from SD-1 forms received by the Department for claims/cases concluded in calendar years 2001 through 2010.

Methods

Pursuant to Tennessee statute, participants in the Tennessee workers' compensation system are required to send certain reports to the Tennessee Department of Labor and Workforce Development (hereinafter Department). One report, the "Employer's First Report of Work Injury or Illness" (hereinafter First Report or C-20), is the document that initiates a claim file within the Department for a reportable workers' compensation claim. This form is required to be completed by the employer for every work-related injury. One of the final reports received by the Department is the "Statistical Data Form" (hereinafter SD-1). It is the closing document for a claim in which a permanent injury was sustained. The SD-1 form is filed by the attorney representing the employer's insurance carrier with the clerk of the court in which a claim is concluded by trial or settlement and the clerk then transmits the completed SD-1 form to the Department. For settlement agreements approved by the Department, the SD-1 form is submitted to the Department at the time of the approval.

The Department operates an integrated computer system which is referred to as the "Workers' Compensation Computer System" (hereinafter WCS). It is into this database that the information from the First Report and the SD-1 forms are entered. The Department has provided, at the request of the Workers' Compensation Advisory Council, data from the WCS. In June of 2011, data from calendar year 2010 was provided. The data is from First Report and SD-1 forms. For 2010 there are 1,221 cases. This report combines previously reported statewide workers' compensation data from 2001 through 2009 with the data provided by the Department. This gives the opportunity to view ten years of Tennessee workers' compensation data.

Number of Cases

Workers' compensation cases which involve permanent injury may be concluded four different ways in Tennessee. Those four ways are as follows:

Trial

A complaint is filed, the case does not settle and the case is tried before a judge who determines the outcome of the case.

Settlement Complaint Filed

A complaint is filed, but the parties reach a settlement agreement prior to trial. Such a settlement may be approved by the court or the Department of Labor and Workforce Development.

Joint Petition Settlement

A complaint is not filed. However, the parties reach an agreed settlement and the agreement is presented to a court for approval. The court requires a petition and an order to be filed.

Settlement Approved by Department of Labor and Workforce Development

The Department has the authority to approve settlements reached in cases in which a complaint has been filed and in cases in which no complaint has been filed.

Table 1 displays the number and percent of each type of conclusion for cases involving permanent injury in Tennessee. The percent of Department approved settlements rose consistently from 25.0% in 2001 to 51.1% in 2004. While still continuing to rise, the percent of Department approved settlements began to level off, from 51.1% of all conclusion types in 2004 to 41.1% in 2005.¹ Cases from calendar year 2010 continue the DoLWD approved settlement rate at around 41%. The actual percent of Department approved settlements for 2010 is 40.1%. The percent of settlements where a complaint was filed continued to show decreases, with 10.1% of cases being of that manner compared to 14.1% in 2004. Trails are utilized to conclude cases 1.1% of the time.

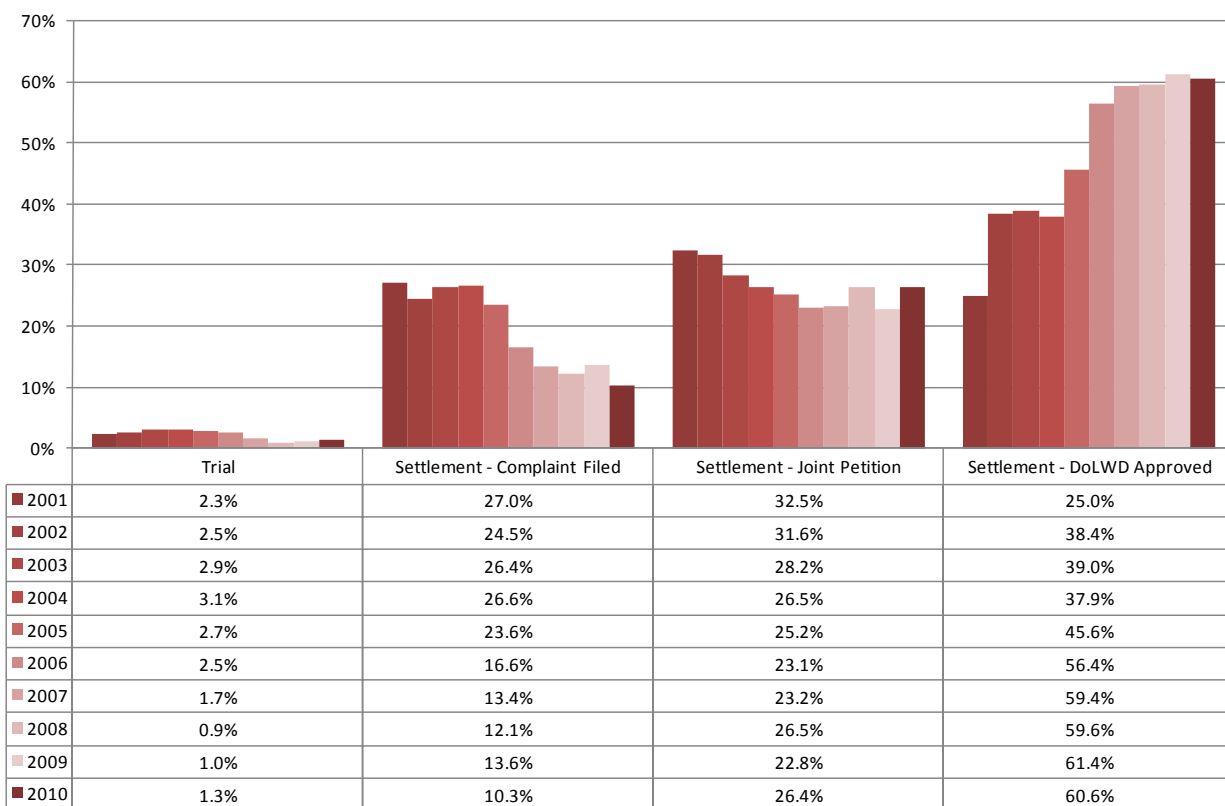
¹ Effective January 1st of 2005, the parties involved in workers' compensation cases are required to participate in the benefit review process.

Figure 1 displays the percent of conclusion types reported in Table 1. The percentages do not add up to 100% on the graph due to “conclusion type not given” and “voluntary dismissal” cases not being included.

Table 1: Type of Conclusion

Year	Trial		Settlement Complaint Filed		Settlement Joint Petition		Settlement DoLWD Approved		Conclusion Type Not Given		Voluntary Dismissal		Total
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent	
C 2001	2	2.3%	27	27.0%	32	32.5%	25	25.0%	1	1.1%	n/c		1005
C 2002	2	2.5%	24	24.5%	31	31.6%	38	38.4%	0	0.1%	n/c		1000
C 2003	3	2.9%	26	26.4%	28	28.2%	39	39.0%	1	1.0%	1	1.0%	1000
C 2004	3	3.1%	26	26.6%	26	26.5%	37	37.9%	1	1.5%	15	1.1%	1211
C 2005	2	2.7%	23	23.6%	25	25.2%	45	45.6%	2	1.0%	10	1.0%	1002
C 2006	2	2.5%	16	16.6%	23	23.1%	56	56.4%	0	0.0%	0	0.0%	111
C 2007	1	1.7%	13	13.4%	23	23.2%	59	59.4%	0	0.0%	0	0.0%	105
C 2008	1	0.9%	12	12.1%	26	26.5%	59	59.6%	0	0.0%	0	0.0%	105
C 2009	1	1.0%	13	13.6%	22	22.8%	61	61.4%	1	1.0%	1	0.2%	151
C 2010	1	1.3%	10	10.3%	26	26.4%	60	60.6%	0	0.0%	0	0.0%	122

Figure 1: Type of Conclusion²



² For the actual number of cases, see Table 1.

Case Length

Date of Injury to Date of Conclusion

The average number of weeks from the date of injury to the date of settlement approval or date of trial is listed in Table 2. The average time from injury to conclusion for 2010 takes just over 1 year 10 months (51.1 weeks). Department approved settlements where a complaint has been filed take an average of 10 weeks to conclude. When a complaint has not been filed, the average time from date of injury to conclusion is 42 weeks, up from 35 weeks in 2009. The percent of Department approved settlements where a complaint has not been filed has increased from 41% in 2005 to 44% in 2009, where it has remained for 2010. Figure 2 displays the number of weeks from injury to conclusion by injury year and conclusion type.

Date of Injury to Maximum Medical Improvement

Table 3 displays the average number of weeks from the date of injury to the date of maximum medical improvement (MMI). The mean number of weeks from the date of injury to the date of MMI has increased by two weeks from last year to 51.1. Figure 3 displays date of injury to date of MMI data broken up by conclusion type and year of conclusion. For cases that were tried by a court, the time from injury to MMI in 2010 is 40 weeks, for settlements where a complaint has been filed, 44 weeks, for joint petition settlements, 44 weeks and for Department approved settlements, 50 weeks. When cases are separated by whether a complaint was filed, Department approved settlements averaged 42 weeks from injury to MMI when a complaint was filed and 50 weeks when no complaint was filed.

Maximum Medical Improvement to Date of Conclusion

The mean number of weeks from MMI to conclusion in 2010 is 44.4 weeks. Table 4 lists the average number of weeks from MMI to conclusion. For 2010, the average number of weeks from MMI to conclusion for Department approved settlements is 44.1. The mean number of weeks from MMI to conclusion for Department approved settlements when a

complaint has not been filed is 2 weeks. When a complaint has been filed, the mean number of weeks from MMI to conclusion is 11 weeks, 11 weeks less than 200.

Down 5 weeks from last year, it took an average of 11.5 weeks for a case to go to trial after MMI had been reached for 2010 cases. Figure 1 displays the mean number of weeks from MMI to conclusion.

Table 2: Number of Weeks from Date of Injury to Date of Conclusion

Year	Frequency	Mean	Median	Std Deviation
C2001	105	5.0	1.0	5.0
C2002	2	5.0	1.0	5.0
C2003	21	0.0	2.0	0.0
C2004	121	0.0	0.0	0.0
C2005	4	5.0	0.0	0.5
C2006	2	0.2	0.0	5.0
C2007	10	0.5	0.0	0.0
C2008	4	5.0	0.0	2.5
C2009	1	0.1	5.0	55.0
C2010	2	0.1	1.0	1.5

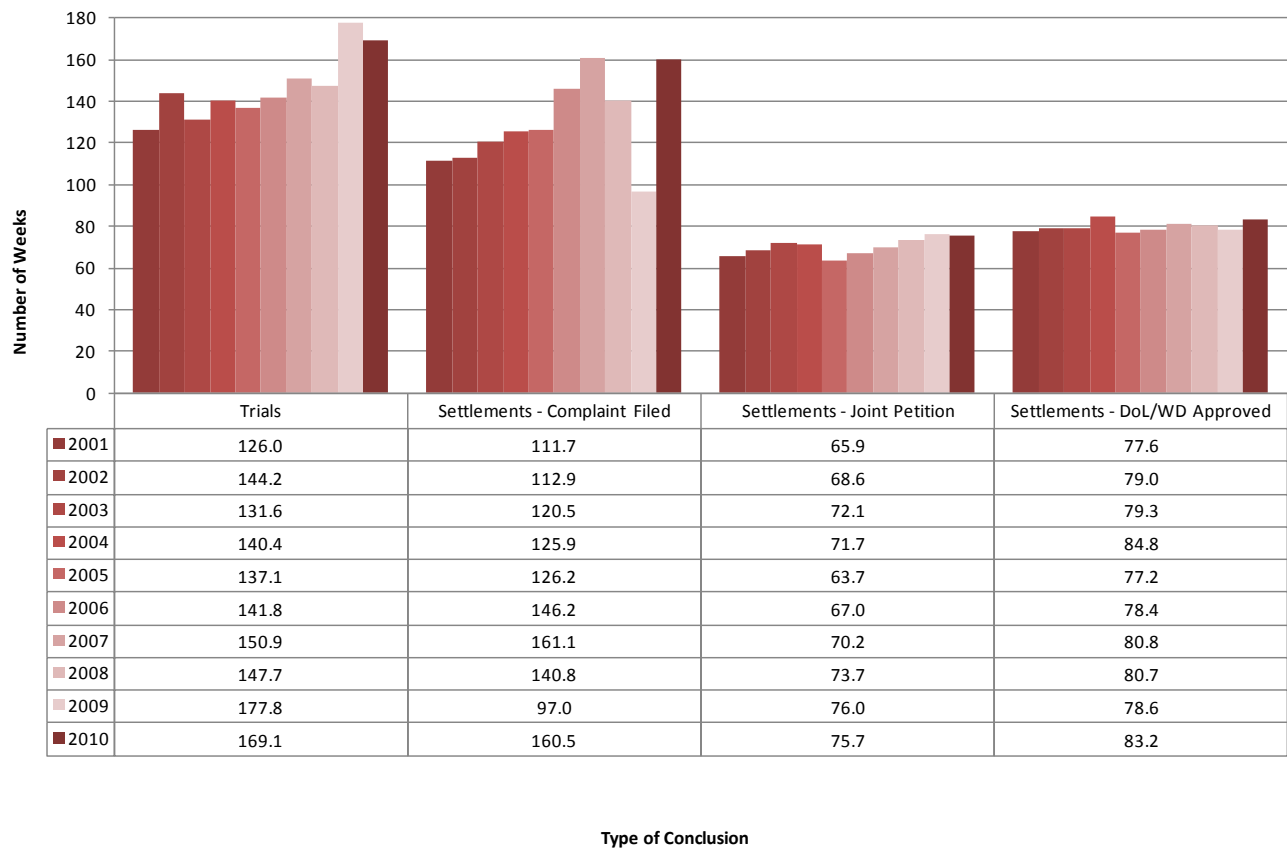
Figure 2: Number of Weeks from Date of Injury to Date of Conclusion

Table 1: Number of Weeks from Date of Injury to Date of Maximum Medical Improvement

Year	Frequency	Mean	Median	Std Deviation
C 2001	25	2.5	2.0	5.0
C 2002	100	10.0	10.0	10.0
C 2003	15	1.0	1.0	1.0
C 2004	1000	5.0	10.0	0.5
C 2005	20	5.0	10.0	0.0
C 2006	51	1.0	5.0	1.5
C 2007	000	1.0	10.0	50.2
C 2008	000	1.0	10.0	5.1
C 2009	1001	1.1	10.0	1.0
C 2010	500	51.1	10.0	2.1

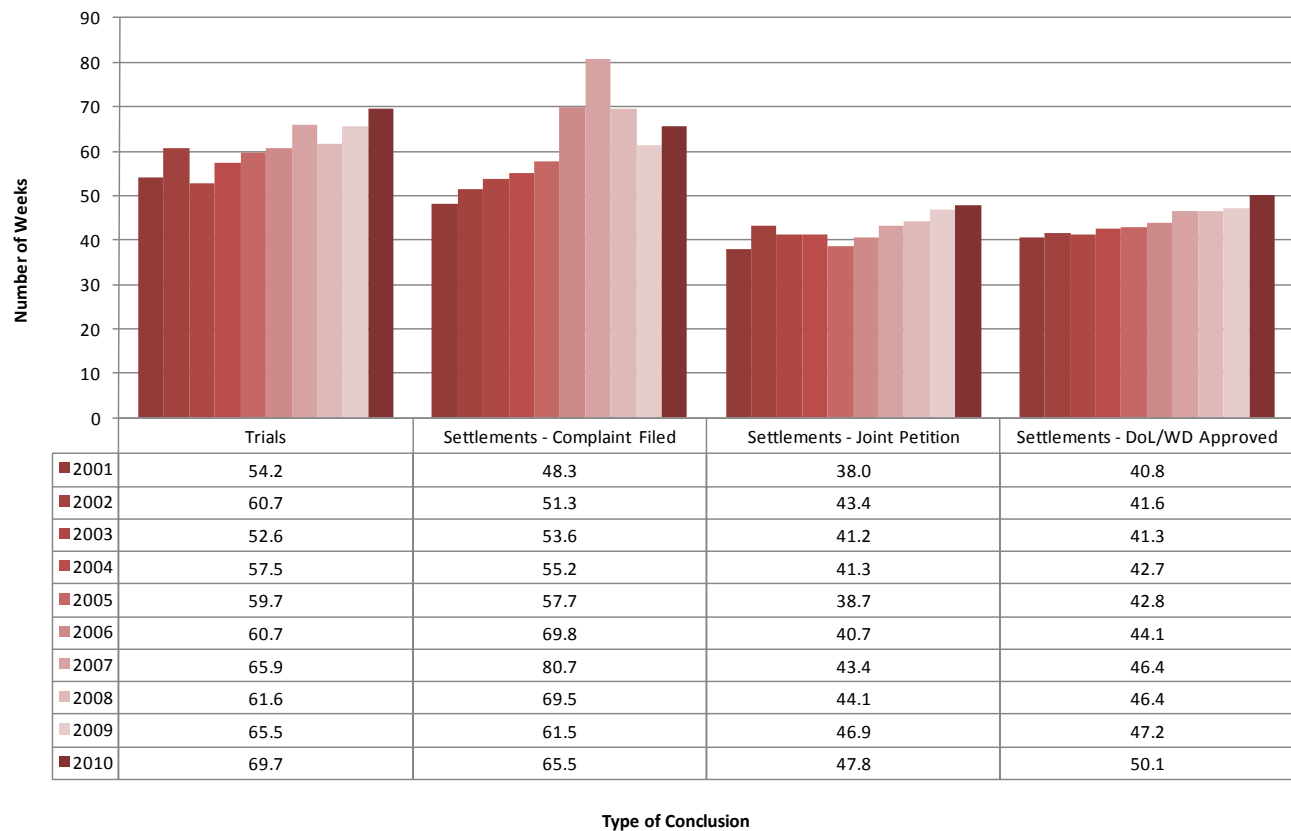
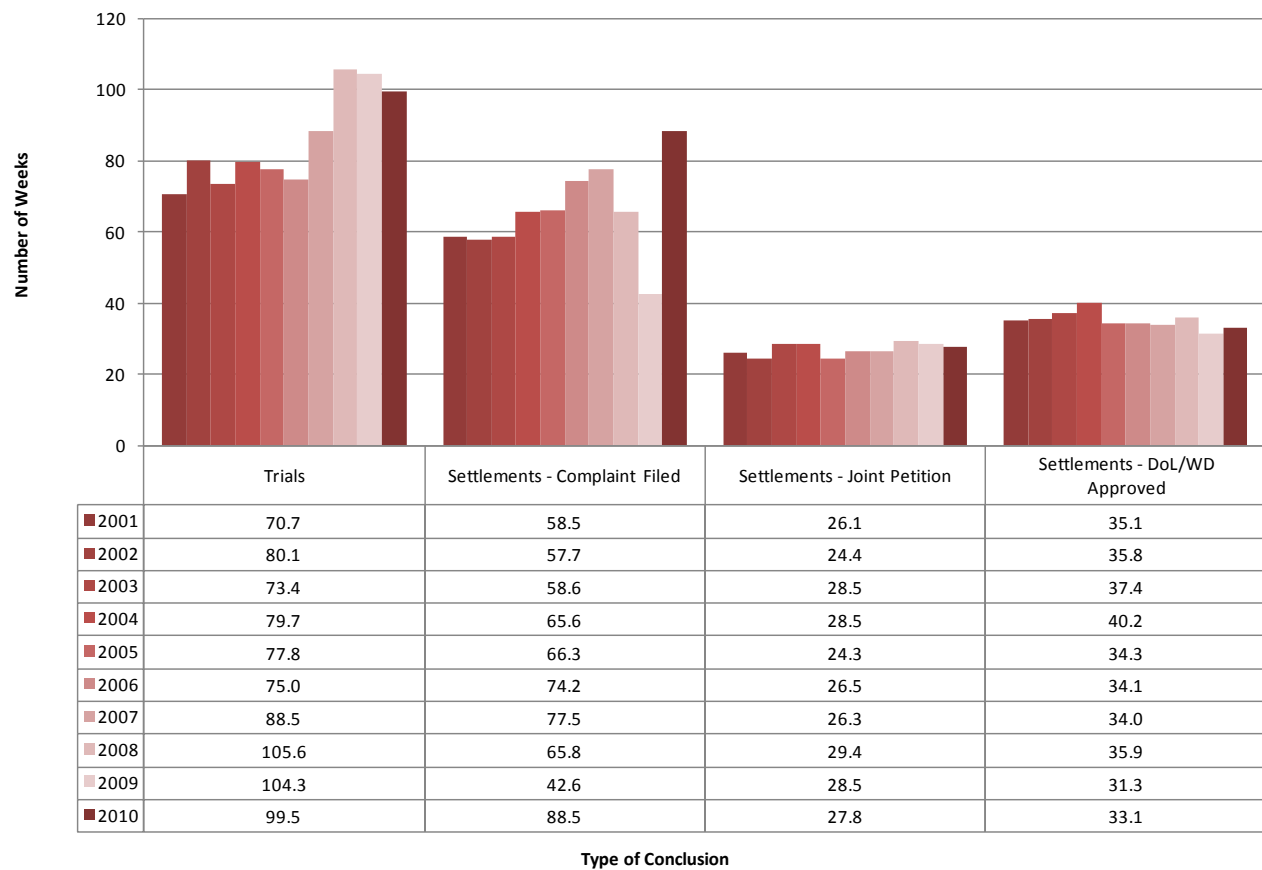
Figure 1: Number of Weeks from Date of Injury to Date of MMI

Table 1: Number of Weeks from Maximum Medical Improvement to Date of Conclusion

Year	Frequency	Mean	Median	Std Deviation
C2001	22	22.0	25.0	10.0
C2002	201	22.0	25.0	10.0
C2003	000	11.2	22.0	50.0
C2004	10000	22.0	22.0	10.0
C2005	55	22.0	25.0	12.0
C2006	200	22.0	22.0	11.1
C2007	501	22.0	22.0	10.0
C2008	100	22.0	22.0	15.0
C2009	250	22.0	20.0	10.0
C2010	22	22.0	22.0	10.0

Figure 1: Number of Weeks from Maximum Medical Improvement to Date of Conclusion

Demographics

Average Age

Table 5 displays the average age of injured workers for 2001 to 2010 cases.¹ The mean age for workers involved in workers' compensation cases in Tennessee that were concluded in 2010 is 45.4 years, which is a half of a year more than the previous two years. The average age of injured workers increased only one tenth of a year from 2008 to 2009 after increasing 2 years from 2006 to 2008.

Level of Education

The level of education of injured workers continues to be increasing. In 2010, 14.5% of workers have less than a high school education, 40.2% have a high school education or equivalent and 24.5% have more than a high school education. The education levels of injured workers in Tennessee are displayed in Table 4. Overall, from 2001 to 2010, the percent of injured workers with less than a high school education is decreasing and the percent with a high school education or more is increasing.

Weekly Compensation Rate

For 2010, the statewide mean is \$1,040. Table 6 lists the average weekly compensation rates for calendar years 2001 to 2010. Mean weekly compensation rates had increased steadily from \$114.10 for 2000 cases to \$440.24 for 2008 cases, which is a rate of 4% to 4% per year except for between 2008 and 2009 and between 2009 and 2010, which increased just 2%. This is the first time since SD-1 data has been collected that average weekly compensation rates have decreased.

¹ To limit the effects of potential errors in the database, ages included in the analysis are limited to those over 14 years and less than 60 years.

Weekly compensation rates are capped at 100% of the average weekly wage in Tennessee for permanent partial disability benefits. In fiscal year 2001-2005, temporary total benefits were capped at 105% of the average weekly wage. From 2005-2009 and on, temporary total benefits in Tennessee are capped at 110% of the state's average weekly wage. Table 1 displays the number of injured workers whose benefits were at the maximum amount.¹ For 2005 and 2009 most of the injured workers at the maximum rate were still capped at 100% of the state's average weekly wage. However, it appears that the number at the maximum amount is decreasing as the percentage of those that would be capped at 110% work their way through the system. By 2009, only 15% of cases involved TTD benefits being capped at 110% of the state's average weekly wage and only 2.1% in 2009 and 2.1% in 2010. The percentage of permanent partial maximum compensation rates have decreased from 11.1% in 2005 to 12.1% in 2010.

Table 1: Average Age

Year	Frequency	Mean	Median	Std Deviation
CY2001	1002	1.1	1.0	11.1
CY2002	1011	1.1	2.0	11.1
CY2003	5000	2.1	1.0	11.1
CY2004	1000	1.2	1.0	11.5
CY2005	1500	1.0	1.0	11.1
CY2006	1000	1.1	5.0	11.1
CY2007	1000	5.2	1.0	12.0
CY2008	1010	5.1	1.0	12.0
CY2009	5000	5.1	1.0	11.1
CY2010	5000	5.1	1.0	11.1

¹ A table of the maximum compensation rates is available at <http://www.state.tn.us/labor/wfd/WCRATET1.pdf>

Table 1: Level of Education

Calendar Year	Less Than High School		High School		More Than High School	
		Percent		Percent		Percent
C2001	12	20.0	11	51.1	155	20.2
C2002	102	11.0	22	51.2	102	21.0
C2003	111	20.0	22	51.0	152	21.0
C2004	101	11.0	52	51.2	2105	21.1
C2005	100	11.1	22	51.0	102	21.2
C2006	120	11.0	51	51.0	150	21.0
C2007	100	15.0	202	10.0	100	21.0
C2008	110	11.0	551	10.0	121	21.0
C2009	00	11.0	00	11.5	11	21.0
C2010	1	11.0	00	10.2	100	21.5

Table 2: Weekly Compensation Rate

Year	Frequency	Mean	Median	Std Deviation
C2001	10251	11.2	12.00	12.00
C2002	50	2.00	22.20	11.00
C2003	1002	55.00	11.00	12.00
C2004	1100	1.00	1.00	15.50
C2005	1005	1.50	2.00	155.00
C2006	550	1.00	2.00	11.51
C2007	000	0.00	1.05	11.2
C2008	21	12.50	0.10	11.00
C2009	001	0.20	05.10	12.00
C2010	25	0.00	5.50	10.00

Table 3: Maximum Compensation Rate Frequencies

Year	Number at PPD Max	Percent at PPD Max	Number at TTD Max	Percent at TTD Max
C2001	151	15.0%	na	na
C2002	100	11.0%	na	na
C2003	155	15.0%	na	na
C2004	100	11.0%	na	na
C2005	101	11.0%	12	11.0%
C2006	150	15.0%	2	1.5%
C2007	100	15.2%	5	1.0%
C2008	101	11.0%	0	1.5%
C2009	100	12.0%	20	2.0%
C2010	105	12.0%	22	2.0%

Temporary Total Disability

Number of Weeks

Table 9 lists the average number of weeks of Temporary Total Disability (TTD) benefits that were paid for 2001 to 2010 cases. The number of weeks of TTD benefits was calculated from SD-1 data by identifying the total monetary amount of TTD benefits reported as paid and dividing by the injured workers reported weekly compensation rate. It is the average of the calculated number of weeks of TTD benefits that Table 9 reports. It is also important to note that this data includes all injury types and severities. The statewide mean for 2010 is 22.2 weeks. Other than a slight decrease in 2005 and 2006, the mean duration of TTD benefits being paid has increased from 12.0 to 22.2 in ten years.

Monetary Amounts

Unlike the number of weeks of TTD benefits, the TTD amount is directly affected by a worker's weekly compensation rate. Mean TTD benefit amounts rose from \$5,500.2 for 2001 cases to \$10,100.1 for 2010 cases. This is the first time that average TTD benefits are more than \$10,000. The average amount of TTD benefits paid is listed in Table 10.

Table 9: Temporary Total Disability – Number of Weeks

Year	Frequency	Mean	Median	Std Deviation
C2001	1000	12.0	12.0	12.0
C2002	1000	20.0	12.0	22.0
C2003	1000	20.0	12.1	25.0
C2004	1505	22.2	12.1	21.5
C2005	1025	20.0	12.0	25.0
C2006	1121	22.0	12.0	22.5
C2007	5000	22.0	12.5	22.5
C2008	1020	22.0	12.0	22.0
C2009	5202	22.5	15.0	22.0
C2010	5005	22.2	12.0	20.0

Table 10: Temporary Total Disability – Monetary Amounts

Year	Frequency	Mean	Median	Std Deviation
C 2001	12	5,502	1,100	100
C 2002		5,000	1,100	200
C 2003	0	2,200	200	10,200
C 2004		5,500	2,000	11,120
C 2005	25	5,000	5,500	5,000
C 2006	121	5,000	5,500	10,000
C 2007	500	5,000	5,000	10,000
C 2008	20	5,200	5,000	11,000
C 2009	522	5,100	5,000	11,500
C 2010	505	10,100	5,000	12,200

Medical Information

Benefits and Expenses

The statewide mean for medical benefits paid in 2010 is \$21,000. Table 11 lists the average amount of medical benefits paid for cases closed in 2001 to 2010. Like the TTD data, this includes all types of injuries and severities. Average medical benefits paid have leveled off since the passage of the 2003 reforms, although 2010 is the highest average medical amounts paid per case since the reforms were enacted.

Number of Permanent Partial Impairment Ratings

Table 12 displays the number of PPI ratings given per case. In most instances this number will be equal to the number of doctors per case, but not always. It is possible that one doctor could give more than one PPI rating for the same injury (i.e., a specific impairment to the hand is converted to a percentage of impairment to the arm). It is also possible that the same doctor could give more than one PPI rating to different body parts injured in the same case (i.e., 10% PPI to the left arm and 5% PPI to the left leg). Usually multiple body part PPI ratings are for injuries to the fingers. Nearly eighty percent (80%) of cases reported the use of only one PPI rating in 2010.

Body Parts Injured

Body part injured and the nature of injury are coded by the Department using IAIAC nature of injury and body part codes. Table 10 lists the 10 most frequently occurring body parts injured for 2010 cases in Tennessee. Table 11 lists the 10 most frequently occurring nature of injuries. Shoulders and knees continue to be the most common body parts injured and strains or tears and fractures are continually the most common types of injuries. The ten most common body parts injured in 2010 account for 41% of all body parts injured and the ten most common types of injuries account for 40% of all types of injuries reported on SD-1 forms.

Table 11: Medical Benefits Expenses

Year	Frequency	Mean	Median	Std Deviation
CY2001	2	15,000.00	10,000.01	2,000.00
CY2002	5	1,002.00	11,000.00	2,010.00
CY2003		1,000.00	11,000.55	0,000.55
CY2004	1050	1,050.55	11,000.05	5,000.01
CY2005	1	20,000.00	12,005.00	0,000.10
CY2006	51	20,000.10	12,020.00	1,200.00
CY2007		20,100.00	11,050.10	55,000.00
CY2008	01	1,000.00	12,151.00	0,000.00
CY2009	55	20,100.00	12,500.00	0,510.00
CY2010	5	21,000.00	10,505.10	0,000.00

Table 12: Number of Permanent Partial Impairment Ratings

Year	Number of PPI Ratings			
	1	2	3	4
CY2001	0.0%	20.0%	0.0%	2.0%
CY2002	5.5%	1.2%	1.1%	0.1%
CY2003	2.0%	15.0%	1.0%	0.2%
CY2004	1.0%	1.0%	1.0%	0.2%
CY2005	0.0%	1.2%	2.5%	0.0%
CY2006	0.0%	1.0%	2.0%	0.0%
CY2007	0.0%	1.0%	2.5%	0.0%
CY2008	1.0%	15.0%	1.0%	0.0%
CY2009	1.0%	15.0%	1.0%	0.5%
CY2010	0.0%	1.0%	2.1%	0.5%

Table 1: Most Frequent Body Parts Injured

Body Part Injured	Frequency	Percent of Cases	Cumulative Percent
Shoulder(s)	1500	14.0	14.0
Knee	1000	12.0	26.0
Multiple Body Systems	000	0.0	26.0
Lower Back Area	010	0.5	26.5
Finger(s)	000	5.0	31.5
Wrist and	000	0.0	31.5
Disc	005	0.2	31.7
Wrist	011	0.0	31.7
Whole Body	200	0.0	31.7
Multiple Upper Extremities	200	2.0	33.7

Table 1: Most Frequently Occurring Nature of Injuries

Type of Injury	Frequency	Percent of Cases	Cumulative Percent
Strain or Tear	2100	25.5	25.0
All Other Specific Injuries - OC	1100	14.0	39.0
Fracture	020	11.0	50.0
Multiple Physical Injuries	010	0.0	50.0
Dislocation	000	0.5	50.5
Carpal Tunnel Syndrome	050	5.0	55.5
Sprain or Tear	000	5.0	60.5
Contusion	020	0.0	60.5
Laceration	200	0.2	60.7
Inflammation	201	2.0	62.7

Body as a Whole, Arm and Leg Injury Cases

New to this report are Tables 15 and 16. These tables display the percent of body as a whole (BAW), arm and leg injury cases where the injured workers were returned to pre injury employment and those who were not. They are included to give a snapshot of the numbers of cases with these type of injuries and return to work status. Table 15 displays the percent of PPI ratings compared to the total number of cases. Table 16 displays the percent of PPD percentages compared to the total number of cases.

Table 1: Percent of Total Cases of Specific Injury Types by Return to Work Status – Injury Type Based on Permanent Partial Impairment Rating

Calendar Year	Return to Work			No Return to Work			Total
	AW	Arm	Leg	AW	Arm	Leg	
2001	22.0%	12.2%	11.1%	10.2%	2.0%	2.0%	10,055
2002	20.0%	11.0%	10.0%	10.0%	2.0%	2.5%	10,000
2003	21.1%	11.0%	10.0%	10.0%	2.0%	2.0%	10,000
2004	10.0%	11.5%	10.0%	10.0%	2.0%	2.0%	121,001
2005	20.0%	10.1%	10.5%	12.0%	2.0%	2.5%	10,002
2006	25.0%	12.0%	11.0%	10.1%	2.0%	2.0%	10,011
2007	25.0%	11.0%	11.0%	10.0%	2.0%	1.0%	10,005
2008	20.0%	10.0%	11.0%	15.0%	2.0%	1.1%	10,000
2009	20.0%	0.0%	12.0%	10.0%	2.0%	0.0%	15,001
2010	20.0%	0.1%	12.2%	10.0%	2.0%	0.0%	22,000

Table 1: Percent of Total Cases of Specific Injury Types by Return to Work Status – Injury Type Based on Permanent Partial Disability Amount

Calendar Year	Return to Work			No Return to Work			Total
	AW	Arm	Leg	AW	Arm	Leg	
2001	20.0%	12.1%	11.0%	11.0%	2.0%	2.0%	10,005
2002	25.0%	11.0%	10.0%	12.0%	2.0%	2.5%	10,000
2003	20.0%	11.0%	10.0%	11.1%	2.0%	2.0%	10,000
2004	10.0%	11.0%	0.0%	10.0%	2.0%	2.0%	121,001
2005	20.5%	10.0%	10.0%	12.5%	2.0%	2.5%	10,002
2006	25.2%	12.0%	10.0%	12.0%	2.0%	2.0%	10,011
2007	10.0%	0.0%	0.0%	11.1%	2.2%	2.1%	10,005
2008	20.0%	0.0%	0.0%	12.0%	2.0%	2.0%	10,000
2009	10.0%	0.0%	10.0%	10.5%	2.1%	2.0%	15,001
2010	20.0%	0.0%	10.0%	15.0%	2.1%	0.0%	22,000

Body as a Whole – Employee Returned to Pre-Injury Employment

Permanent Partial Impairment Rating

Table 1 lists the average of the highest permanent partial impairment (PPI) ratings given for AW cases in which the injured workers returned to work for their pre-injury employers at the same or higher pay. As with previous reports, the “average highest PPI rating” is the average of each of the highest impairment ratings given by a physician to the injured worker in each of the cases reviewed. The average highest PPI is utilized as a comparison because a judge has discretion to accept any of the PPI ratings given. The

statewide mean PPI for 2010 is 1.1 to the 1AW. The lowest amount observed in the ten years reported.

Permanent Partial Disability Percentage

Table 1 lists the average percentage of permanent partial disability (PPD) awards/settlements for body as a whole injuries in cases where the injured employee returned to work for the same employer. The mean PPD percentage for 2010 cases is 12.1 (50.1 weeks) to the body as a whole. Average PPD benefits for body as a whole return to work cases have decreased over half of a year (more than 21 weeks) since the implementation of the 2001 reforms.

Permanent Partial Disability Multiplier

A permanent partial disability (PPD) multiplier is the ratio of the PPD judgment or settlement amount to the highest PPI rating given to an injured employee. To determine the multiplier, the PPD percent was divided by the highest PPI rating. To ensure accuracy, cases were selected for analysis only if the SD-1 form included both a 1AW PPI rating and a 1AW PPD judgment or settlement amount.

PPD multipliers stayed nearly constant from 2002 to 2005 at 2.2 then decreased to 1.1 for 2006 and 1.1 for 2007 through 2010. PPD multiplier data for 1AW cases where the injured worker returned to work are listed in Table 1.

Permanent Partial Disability Monetary Amounts

In order to provide the most complete data and also to be consistent with previously reported data, PPD monetary benefit amounts are calculated by multiplying PPD percent amounts, compensation rates and the appropriate number of weeks of benefits. Table 20 lists the average PPD monetary payments for 1AW return to work cases. PPD monetary amounts for 1AW return to work cases have decreased from \$1,000.00 in 2001 to \$2,000.00 in 2010.

Medical Benefit Expense Amounts

Medical benefit expense amounts for specific body part and judgment/settlement types as reported on the SD-1 were first reported for 2001 data. After steady decreases, the mean amount paid for medical benefits at the time of conclusion is \$2,000.00 2010 PAW cases where the injured worker returned to work. Table 21 lists the average medical amounts paid for PAW return to work cases concluded in calendar years 2001 through 2010. After years of decreases, medical expenses for PAW return to work cases increased.

Table 1: Permanent Partial Impairment Body as a Whole Injuries Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	212	1.2	1.0	1.0
C2002	2011	1.5	1.0	1.0
C2003	2100	1.0	1.0	1.0
C2004	1150	1.0	1.0	1.0
C2005	2000	1.0	1.0	1.1
C2006	2000	1.0	1.0	1.0
C2007	2200	1.0	1.0	1.0
C2008	2112	1.5	1.0	1.0
C2009	2000	1.0	1.0	1.0
C2010	2052	1.0	1.0	1.0

Table 1: Percentage Awarded for Permanent Partial Disability Body as a Whole Injuries Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	2110	11.0	15.0	11.0
C2002	2005	11.0	15.0	15.0
C2003	2005	11.0	15.0	11.0
C2004	1155	20.0	15.0	11.0
C2005	2000	11.0	11.5	11.0
C2006	2000	11.0	12.0	15.0
C2007	1115	11.0	12.0	15.0
C2008	1000	15.0	10.5	11.1
C2009	1100	11.0	1.0	11.2
C2010	1100	12.0	1.0	12.0

Table 1: Permanent Partial Disability Multipliers – Body as a Whole – Injuries – Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	22	2.2	2.0	0.0
C2002	1	2.0	2.0	0.0
C2003	21	2.2	2.0	0.0
C2004	152	2.2	2.0	1.1
C2005	20	2.2	1.0	.5
C2006	250	1.0	1.5	2.2
C2007	112	1.0	1.5	1.0
C2008	100	1.0	1.5	0.0
C2009	101	1.0	1.5	1.0
C2010	10	1.0	1.5	1.0

Table 20: Permanent Partial Disability – Monetary Benefits – Body as a Whole – Injuries – Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2003	1	1,000.00	22,000.02	2,051.00
C2005	25	0,000.00	21,000.22	2,000.02
C2006	215	2,150.20	1,000.00	2,000.00
C2007	10	2,002.50	1,000.00	2,505.01
C2008	1	2,120.22	1,020.10	2,000.00
C2009	15	2,000.00	1,000.00	2,105.05
C2010	1	2,000.00	15,000.10	2,002.00

Table 21: Medical Benefits – Expenses – Body as a Whole – Injuries – Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2003	11	2,000.51	1,000.51	0,050.10
C2005	201	2,150.00	1,000.00	5,000.00
C2006	2210	21,000.00	15,000.00	25,000.05
C2007	20	22,100.00	15,000.00	0,000.25
C2008	21	21,000.10	1,215.01	25,200.00
C2009	1	21,100.11	15,000.00	0,000.00
C2010	1	2,000.00	1,000.00	51,000.00

Body as a Whole Cases Employee Did Not Return to Pre-Injury Employment

Permanent Partial Impairment Ratings

Average highest permanent partial impairment (PPI) ratings for AW cases where the injured worker did not return to work are listed in Table 22. The mean PPI rating for body as a whole cases where the injured worker did not return to work for 2010 is 12.0. There appears to be no consistent trend in body as a whole non return to work PPI ratings, however 12.0 is the lowest PPI rating in 10 years.

Permanent Partial Disability Percentage

Table 23 lists the average percentage of PPD for employees with injuries to the body as a whole that did not return to work for the pre-injury employer. For calendar year 2010, the average PPD percentage is 2.0 (10.0 weeks), the lowest amount in ten years of data, but very close to the average observed in 2000 (2.0).

Permanent Partial Disability Multipliers

Table 24 lists the average PPD multipliers for AW no return to work cases. Mean PPD multipliers for AW cases in which the employee did not return to work for the pre-injury employer are consistent over the ten years reported, ranging from 1.0 to 1.1. For 2010, the mean multiplier is 1.2.

Permanent Partial Disability Monetary Amounts

Table 25 lists the average judgment and settlement monetary amounts for AW no return to work cases. Mean PPD judgment and settlement amounts for AW no return to work cases were \$5,000.22 in 2000, \$5,500.00 in 2001 and \$1,500.00 in 2010.

Medical Benefit Expense Amounts

The average medical benefit expense amounts for AW no return to work cases are displayed in Table 2. The mean amounts paid for 2010 was \$1,550,000, up from previous years. Of note is that the median amount was the highest since 2001.

Table 22: Permanent Partial Impairment Body as a Whole Injuries Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	1000	10.2	10.0	10.1
C2002	1000	12.0	10.0	12.1
C2003	1010	12.0	10.0	11.0
C2004	1000	10.2	10.0	11.2
C2005	1050	12.0	10.0	10.0
C2006	1200	10.0	10.0	11.0
C2007	1000	10.2	10.0	10.0
C2008	1521	10.0	11.0	12.2
C2009	1000	12.0	10.0	11.0
C2010	1500	12.0	10.0	11.1

Table 2: Percentage Awarded for Permanent Partial Disability Body as a Whole Injuries Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	1100	10.0	10.0	20.5
C2002	1200	10.0	20.0	20.0
C2003	1150	10.5	20.0	20.0
C2004	1000	10.0	10.0	20.0
C2005	1020	15.0	10.0	20.2
C2006	1200	10.0	20.0	20.0
C2007	1005	10.1	10.0	20.0
C2008	1210	15.0	20.0	20.5
C2009	1100	12.0	25.0	20.0
C2010	1000	12.0	25.5	20.0

Table 2: Permanent Partial Disability Multipliers Body as a Whole Injuries Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	10	.2	.0	1.
C2002		.2	.0	1.
C200	101	.2	.0	1.5
C200	11	.1	.0	1.
C2005	12	.1	.0	2.
C200	12	.2	.0	2.2
C200	1005	.1	2.	2.
C200	120	2.	2.	1.
C200	110	.1	.0	1.
C2010	102	.2	.0	2.

Table 2: Permanent Partial Disability Monetary Benefits Body as a Whole Injuries Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C200		50,221.00	000,000.00	1,15.00
C2005	115	50,000.02	000,000.02	1,150.02
C200	120	50,000.00	000,001.00	1,200.02
C200	1005	50,522.00	000,000.50	1,220.05
C200	120	50,000.22	000,500.00	1,020.01
C200	110	50,050.00	000,000.20	1,200.00
C2010	12	51,500.00	000,000.00	1,500.00

Table 2: Medical Benefits Expenses Body as a Whole Injuries Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C200	0	000,505.00	20,051.02	50,000.00
C2005	11	5,102.25	20,200.00	5,020.10
C200	10	0,000.00	20,200.01	000,025.00
C200	112	5,005.00	10,000.00	2,000.05
C200	12	000,200.00	10,000.01	55,000.20
C200	121	000,005.10	10,010.00	000,021.50
C2010	111	000,550.00	22,002.20	50,010.00

Arm Injuries Employee Returned to Pre-Injury Employment

Permanent Partial Impairment Rating

Average PPI ratings for cases involving an injury to the arm where the injured worker returned to work are listed in Table 2. The statewide mean PPI rating for 2010 is .2 to the arm. Mean PPI ratings have decreased from .0 in 2001 to .2 in 2010.

Permanent Partial Disability Percentage

The average PPD percentage for return to work (for pre-injury employer) arm cases are listed in Table 2. Arm injury cases where injured workers returned to work show no consistent trend of increasing or decreasing for cases concluded in 2001 to 200. However, from 200 to 2010, average PPD percentage amounts are down from 1.0 to .4. This is equivalent to a decrease of 1.4 weeks of benefits.

Permanent Partial Disability Multiplier

Table 2 lists the average PPD multiplier for cases involving arm injuries where the injured worker returned to work. The multiplier edged up from 2. in 2001 to .0 in 200, to then decrease to 1. for 2010.

Permanent Partial Disability Monetary Amounts

Table 0 displays the average PPD monetary amounts paid in return to work arm cases. Judgment/settlement amounts for return to work arm cases have decreased by over \$5,000 in six years. The mean PPD judgment/settlement amount for return to work arm cases in 2010 is \$1,105.

Medical Expense Benefit Amounts

The mean amounts of medical benefits/expenses for arm cases where the injured worker returned to work are presented in Table 1. Mean medical amounts for return to work arm cases are between \$11,100 and \$12,500 for the seven years analyzed. The mean amount of medical expenses/benefits for 2010 is \$11,124.00.

Table 2: Permanent Partial Impairment – Arm Injuries – Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	1200	11.0	11.0	1.0
C2002	1000	11.2	11.0	1.0
C2003	1210	11.1	11.0	1.0
C2004	1115	11.1	11.0	1.0
C2005	1505	11.1	11.0	1.0
C2006	1200	11.1	11.0	1.0
C2007	1000	11.1	11.0	1.0
C2008	1021	11.0	11.0	1.0
C2009	1100	11.1	11.0	1.0
C2010	1150	11.2	11.0	1.0

Table 2: Percentage Awarded for Permanent Partial Disability – Arm Injuries – Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	1200	21.1	11.0	11.0
C2002	1000	11.0	15.0	11.0
C2003	1211	11.1	15.0	15.0
C2004	1115	11.0	15.0	11.0
C2005	1112	11.5	12.0	11.0
C2006	1115	11.1	10.0	11.1
C2007	121	11.5	11.5	11.0
C2008	155	10.1	11.5	11.0
C2009	101	10.1	11.0	10.0
C2010	121	11.1	11.0	10.0

Table 2: Permanent Partial Disability Multipliers – Arm Injuries – Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C-2001	12	2.0	2.5	1.0
C-2002	10	2.0	2.5	1.0
C-2003	120	2.0	2.5	1.0
C-2004	1	1.0	2.5	2.0
C-2005	1	2.0	2.0	2.0
C-2006	11	2.1	1.5	1.0
C-2007	21	1.0	1.5	1.0
C-2008	55	1.0	1.5	1.1
C-2009	0	1.0	1.5	1.2
C-2010	22	1.0	1.5	0.0

Table 3: Permanent Partial Disability – Monetary Benefits – Arm Injuries – Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C-2001	1	10,51.21	10,00.02	1,200.00
C-2005	1	12,50.52	0,100.05	12,20.20
C-2006	11	10,50.02	0,010.00	12,50.51
C-2007	12	0,010.20	5,000.00	0,000.05
C-2008	0	0,000.05	5,520.00	0,000.00
C-2009	5	0,000.05	5,20.12	0,000.00
C-2010	15	0,100.05	0,000.00	10,115.00

Table 4: Medical Benefits – Expenses – Arm Injuries – Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C-2001	102	12,200.05	0,022.05	11,200.00
C-2005	1	12,000.20	0,010.20	12,200.05
C-2006	1125	12,001.11	0,500.00	21,500.20
C-2007	0	11,000.15	0,000.05	10,000.02
C-2008	5	12,200.10	0,025.00	21,000.10
C-2009	0	11,010.00	0,000.51	12,000.00
C-2010	0	11,120.00	0,001.00	0,010.05

Arm Injuries Employee Did Not Return to Pre-Injury Employment

Permanent Partial Impairment Rating

For 2010, the mean PPI rating for no return to work arm cases is 4.4, the lowest in the ten years reported. The average PPI ratings for arm cases in which the employee did not return to work for the pre-injury employer are listed in Table 2. Mean PPI ratings for no return to work arm cases show no pattern of increasing or decreasing and have ranged from 4.4 to 12.0 over the ten years reported. However, average PPI ratings have decreased by 4.4 between 2000 and 2010.

Permanent Partial Disability Rating Percentage

Average PPD percentages for cases that involved arm injuries where the worker did not return to work for the pre-injury employer are listed in Table 3. Following the average PPI ratings, PPD judgment/settlement percentages display no clear trend. For 2010 the mean PPD rating for no return to work arm injury cases is 14.4 (33.3 weeks), the lowest amount in ten years, likely because the average 2010 PPI ratings were the lowest as well.

Permanent Partial Disability Rating Multiplier

Table 4 lists the average PPD multipliers for no return to work arm cases. The PPD multiplier for 2010 arm cases is 1.2, up from 2.0 in 2000 and 1.0 in 2001, but lower than 2005 and earlier cases.

Permanent Partial Disability Rating Monetary Amounts

The mean PPD monetary amounts paid for 2010 cases is \$1,005.51, the lowest amount in ten years. Table 5 displays average PPD monetary benefits paid for no return to work arm cases.

Medical Benefit Expense Amounts

Table 1 displays the average monetary amounts paid for medical benefits expenses for arm injury cases where the injured worker did not return to work. Average medical benefits expenses paid for 2010 were \$1,000.2, the lowest amount in the seven years reported.

Table 1: Permanent Partial Impairment Arm Injuries Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	10	11.0	10.0	10.0
C2002	25	10.0	9.5	9.0
C2003	252	9.0	9.0	9.0
C2004	200	11.0	9.0	19.0
C2005	200	11.0	9.0	19.1
C2006	200	10.5	9.0	10.0
C2007	22	10.0	9.0	12.2
C2008	250	11.1	9.0	12.0
C2009	225	9.0	9.0	9.0
C2010	100	9.0	5.0	9.0

Table 2: Permanent Partial Disability Percentages Arm Injuries Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	10	29.5	29.0	19.0
C2002	25	29.0	22.0	19.0
C2003	251	29.1	22.5	19.0
C2004	200	30.0	29.0	22.0
C2005	200	31.0	29.5	25.5
C2006	22	29.0	21.5	29.0
C2007	100	29.0	19.0	21.0
C2008	200	25.5	19.5	22.0
C2009	100	29.0	19.0	21.0
C2010	100	19.0	15.0	19.5

Table 11: Permanent Partial Disability Multipliers – Arm Injuries – Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	0	1	1.0	2.0
C2002	25	1.5	1.0	2.0
C2003	200	1.5	1.0	1.0
C2004	200	1	1.0	2.0
C2005	22	1	1.0	2.0
C2006	21	1.2	1.0	1.0
C2007	100	1.1	2.5	2.0
C2008	200	2.0	2.5	1.5
C2009	100	1.0	2.0	2.0
C2010	100	1.2	1.0	2.1

Table 12: Monetary Benefits – Arm Injuries – Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	20	1,051.00	1,000.00	15,50.00
C2005	20	22,151.12	1,000.00	25,12.00
C2006	200	1,000.00	1,000.00	1,111.00
C2007	100	1,020.00	11,211.20	1,000.02
C2008	21	1,000.20	10,500.00	1,505.02
C2009	100	1,155.10	11,550.00	1,120.00
C2010	15	1,055.51	10,200.00	1,200.00

Table 13: Medical Benefits – Expenses – Arm Injuries – Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	21	15,000.20	12,000.00	1,000.20
C2005	21	2,255.50	12,001.00	5,511.01
C2006	222	1,525.20	1,100.00	2,000.00
C2007	220	1,000.00	11,100.50	2,000.00
C2008	220	15,255.50	11,005.00	1,001.50
C2009	100	1,000.10	11,501.12	0,200.00
C2010	100	1,000.20	11,102.01	15,05.20

Leg Injuries Employee Returned to Pre-Injury Employment

Permanent Partial Impairment Rating

Average highest PPI ratings for cases involving a leg injury where the employee returned to work for the pre-injury employer are listed in Table 11. The average PPI rating for 2010 cases involving a leg injury where the employee returned to work for the pre-injury employer is 10. Over ten years, average PPI ratings ranged from 10 to 11. No clear trend emerges for leg injury impairment ratings when the injured worker returned to work, however, average PPI ratings for leg injury return to work cases in 2010 are the lowest observed in ten years.

Permanent Partial Disability Percentage

Average PPD percentage for judgments and settlements for return to work leg injury cases are reported in Table 11. Average PPD percentage amounts for return to work leg injury cases decreased by nearly 1% weeks from 21.2 (21.2 weeks) in 2000 to 11.1 (21.1 weeks) in 2010.

Permanent Partial Disability Multiplier

Table 11 lists the average PPD multipliers for return to work leg injury cases. Only cases in which the PPI rating and the PPD percentage were attributed to the leg on the SD-1 form are included in the analysis. There had been relatively no change in the average statewide PPD multipliers for return to work leg cases from 2000 to 2009. Average PPD multipliers have decreased from 2.1 in 2005 to 1.5 in 2010. Return to work leg cases from 2010 also have equal means and medians and display very little variance compared to other years.

Permanent Partial Impairment Monetary Amounts

The mean amount paid for 2010 is \$11,045.00, the lowest amount in ten years. The average PPD monetary payments for return to work leg injury cases are listed in Table 10. The median amounts paid for return to work leg injury cases have steadily decreased from 2001 to 2010.

Medical Benefits Expense Amounts

Medical benefits expenses have decreased from \$12,222.00 in 2001 to \$11,051.01 in 2004, and then increased slightly to \$11,000.50 in 2010. Table 11 reports the average amount of medical benefits expenses for leg injury cases where the injured worker returned to work.

Table 10: Permanent Partial Impairment Case Injuries Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	112	12.2	1.0	1.5
C2002	105	1.1	1.0	1.1
C2003	105	1.1	1.0	1.1
C2004	121	1.1	1.0	1.5
C2005	111	1.1	1.0	1.1
C2006	101	1.1	1.0	1.2
C2007	105	1.1	1.0	1.1
C2008	1101	1.0	1.0	1.1
C2009	102	1.1	1.0	1.1
C2010	100	1.0	1.0	1.1

Table 11: Percentage Awarded for Permanent Partial Disability of Injuries of Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	1101	21.0	10.5	10.0
C2002	1005	20.0	15.0	10.0
C2003	1002	21.2	10.0	10.0
C2004	1211	20.0	15.0	10.0
C2005	1100	10.5	10.0	10.2
C2006	1050	15.0	10.5	10.0
C2007	002	10.0	10.0	10.1
C2008	000	10.0	10.1	10.0
C2009	055	10.1	0.0	10.0
C2010	051	11.0	0.0	11.0

Table 12: Permanent Partial Disability Multipliers of Injuries of Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	1100	2.0	2.5	1.0
C2002	1001	2.0	2.5	1.0
C2003	1001	2.0	2.5	1.0
C2004	1205	2.0	2.5	1.0
C2005	1105	2.0	1.0	1.0
C2006	1050	1.0	1.5	1.5
C2007	002	1.0	1.5	1.5
C2008	000	1.0	1.5	1.0
C2009	055	1.0	1.5	1.0
C2010	051	1.5	1.5	0.0

Table 13: Permanent Partial Disability Monetary Benefits of Injuries of Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	1200	10,200.00	11,200.00	10,005.00
C2005	1101	10,550.00	00,005.55	10,500.00
C2006	1000	10,025.00	00,200.00	10,000.00
C2007	000	11,015.15	00,000.00	10,201.00
C2008	020	12,000.00	00,011.50	10,012.50
C2009	020	11,501.10	00,100.00	10,050.00
C2010	000	11,005.00	00,000.00	12,100.00

Table 1: Medical Benefits Expenses for Injuries of Employee Returned to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2000	11	12,202.00	12,215.50	11,005.52
C2005	1050	12,000.00	12,505.00	15,510.00
C2000	1000	12,000.20	11,510.51	12,220.00
C2000	100	12,050.00	10,100.00	2,010.01
C2000	102	12,500.10	10,010.00	1,210.01
C2000	55	12,050.01	10,100.21	1,000.00
C2010		12,000.50	10,000.00	1,002.10

Injuries of Employee Did Not Return to Pre-Injury Employment

Permanent Partial Impairment Ratings

The average highest PPI rating for no return to work leg cases in 2010 is 1.0, the same as it was in 2000 and one of the lowest in ten years. The average highest PPI ratings for leg injury cases where the injured worker did not return to work for the pre-injury employer are listed in Table 2. Average highest PPI ratings ranged from 1.2 to 15.5 with no clear trends emerging.

Permanent Partial Disability Percentage

The mean amount of PPD benefits for 2010 leg injury cases where the injured worker did not return to work is 2.0 (2 weeks), up five weeks from 2000. Average PPD percentages for cases involving leg injuries where the employee did not return to work are listed in Table 3. As is the case for average highest PPI ratings for no return to work leg cases, no clear trend emerges for average PPD percentages.

Permanent Partial Disability Multipliers

Table 1 lists the average PPD multipliers for leg injury cases where the injured worker did not return to work. The statewide mean multiplier for 2010 no return to work leg injury cases is 1.0 and have historically ranged from 2.0 to 1.5.

Permanent Partial Disability Monetary Amounts

The mean PPD benefit amount for 2010 is \$21,211, up nearly \$1,000 from 2009 and the highest amount in seven years. Table 5 displays average PPD monetary benefits paid for no return to work leg cases.

Medical Benefit Expense Amounts

The statewide average amounts for medical benefits/expenses paid for leg injury cases where the injured worker did not return to work are presented in Table 1. The mean medical benefit/expense for 2010 cases is \$25,001, up over \$1,000 from 2009.

Table 2: Permanent Partial Impairment Due Injuries Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	200	1.0	10.0	1.0
C2002	200	1.0	1.0	15.5
C2003	252	1.2	1.0	11.5
C2004	200	1.2	10.0	1.0
C2005	201	1.0	10.0	1.0
C2006	205	15.0	10.0	15.0
C2007	201	1.0	10.0	1.0
C2008	100	15.0	10.0	1.5
C2009	115	1.0	10.0	11.0
C2010	110	1.0	10.0	11.0

Table 11: Percentage Awarded for Permanent Partial Disability of the Injuries of Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	200	5.0	0.0	25.5
C2002	200	0.0	20.0	20.0
C2003	252	0.2	0.0	20.0
C2004	200	0.0	0.0	25.2
C2005	201	0.0	0.0	20.0
C2006	200	0.0	20.0	20.0
C2007	101	0.2	20.0	20.0
C2008	250	0.0	20.0	20.0
C2009	200	0.2	20.5	20.0
C2010	200	0.0	20.2	20.0

Table 12: Permanent Partial Disability Multipliers of the Injuries of Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2001	202	0.0	0.0	1.0
C2002	202	0.0	0.0	1.0
C2003	250	0.0	0.0	1.0
C2004	200	0.5	0.1	2.0
C2005	201	0.5	0.0	2.5
C2006	200	2.0	2.5	2.0
C2007	101	0.0	2.0	0.0
C2008	250	2.0	2.0	1.0
C2009	200	2.0	2.0	1.5
C2010	200	0.0	2.0	2.2

Table 13: Permanent Partial Disability Monetary Benefits of the Injuries of Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C2003	201	20,000.05	10,200.00	20,500.00
C2005	200	20,000.10	10,000.00	22,050.05
C2006	200	22,500.10	10,000.00	20,000.20
C2007	100	20,000.00	10,500.00	20,000.00
C2008	250	20,220.05	10,000.00	25,000.00
C2009	205	20,000.10	10,000.00	22,200.20
C2010	205	20,210.21	10,000.50	20,000.10

Table 11: Medical Benefits Expenses Due to Injuries to Employee Did Not Return to Work for Pre-Injury Employer

Year	Frequency	Mean	Median	Std Deviation
C 2001	21	22,000.01	10,005.55	10,205.01
C 2002	20	25,001.05	10,000.21	20,002.20
C 2003	20	20,055.00	10,000.00	15,510.05
C 2004	20	20,052.10	10,000.50	10,002.00
C 2005	25	20,112.00	15,005.02	20,005.01
C 2006	20	21,000.21	10,100.00	22,000.00
C 2010	20	25,000.10	15,001.00	20,000.00

Psychological Injury

On the SD-1 form, the parties are to fill out whether there was a psychological injury claimed and whether that injury was the sole claim. Tables 11 and 12 indicate psychological injury and psychological sole claim frequencies respectively. The percent of psychological injuries had reduced from 2.0% in 2001 to 1.0% in years 2002 through 2006, then increased to 2.1% of cases in 2010. The percent of sole psychological injury claims for 2010 is 0.5% of the total number of cases.

Table 12: Workers' Compensation Cases in Which Psychological Injury Was Claimed

Year	Total Cases	Number Claiming Psych Injury	Percent
C 2001	10005	21	2.5%
C 2002	10000	21	2.2%
C 2003	10000	20	2.0%
C 2004	12101	20	2.0%
C 2005	10002	10	1.0%
C 2006	10011	10	1.0%
C 2007	10005	155	1.0%
C 2008	10000	10	1.0%
C 2009	1501	10	1.0%
C 2010	220	10	2.1%

Table 44: Workers' Compensation Cases in Which Psychological Injury Was the Sole Injury Claimed

Year	Total Cases	Number Claiming Sole Psychological Injury	Percent
Calendar Year 2001	10,005	0	0.0%
Calendar Year 2002	10,000	0	0.0%
Calendar Year 2003	10,000	1	0.0%
Calendar Year 2004	121,001	1	0.0%
Calendar Year 2005	10,002	2	0.0%
Calendar Year 2006	10,011	0	0.0%
Calendar Year 2007	10,005	1	0.2%
Calendar Year 2008	10,000	2	0.0%
Calendar Year 2009	15,001	5	0.0%
Calendar Year 2010	22,000	5	0.5%

Permanent Total Disability

There are two methods of collecting data on the frequency of permanent total disability (PTD) cases. The SD-1 form permits a case to be identified as a permanent total disability trial or settlement. The frequencies in which those specific fields on the SD-1 are filled in are displayed in Table 45. The percent of PTD cases as identified on the SD-1 for 2010 is 0.0% (2 cases).

The SD-1 form also collects the amounts of different types of monetary benefits that are associated with each workers' compensation case. Table 50 displays the number of SD-1 forms in which the reported PTD monetary benefit amount is greater than \$0.00 for calendar year 2001 through 2010 cases. The percent of cases in which PTD benefits were paid/awarded is 0.1% (11 cases) for 2010.

Table 11: Permanent Total Disability Case Frequencies

Year	PTD Settlement		PTD Trial		Total
	Frequency	Percent	Frequency	Percent	
2001	11	1.10%	1	0.10%	1.20%
2002	120	1.21%	1	0.10%	1.35%
2003	5	0.22%	1	0.10%	0.32%
2004	1	0.11%	1	0.10%	0.20%
2005	0	0.00%	1	0.01%	0.01%
2006	1	0.11%	0	0.00%	0.50%
2007	1	0.51%	5	0.00%	0.50%
2008	1	0.51%	0	0.00%	0.51%
2009	2	0.11%	0	0.00%	0.11%
2010	25	0.10%	1	0.01%	0.12%

Table 10: Frequencies of Monetary Permanent Total Disability Benefits Paid

Year	PTD Settlement Benefits Paid		PTD Trial Benefits Paid		PTD Benefits Paid Conclusion Type Missing		Total
	Frequency	Percent	Frequency	Percent	Frequency	Percent	
2001	151	1.22%	10	0.00%	2	0.00%	1.22%
2002	11	1.10%	10	0.10%	0	0.00%	1.11%
2003	1	0.05%	0	0.00%	2	0.02%	0.07%
2004	1	0.11%	0	0.05%	0	0.02%	0.16%
2005	55	0.50%	1	0.01%	2	0.02%	0.53%
2006	1	0.11%	1	0.01%	1	0.01%	0.13%
2007	1	0.11%	1	0.01%	0	0.01%	0.23%
2008	25	0.20%	1	0.01%	0	0.01%	0.21%
2009	1	0.11%	1	0.01%	0	0.00%	0.12%
2010	0	0.11%	1	0.01%	1	0.01%	0.12%

Death Cases

The monetary amount of death benefits paid is also reported on SD-1 forms. As in previous years, only a handful of cases report death benefits being paid. For 2010 there were only 2 cases.⁵

⁵ The actual number of cases in which death benefits were paid for 2005 through 2009 cases are as follows: 5 (0.05%) in 2005, 15 (0.15%) in 2006 and 0 (0.00%) in 2007.

Appeals

After a case has been tried by a court in Tennessee, either party may appeal the court's verdict to the Tennessee Supreme Court. Pursuant to Supreme Court rules, all workers' compensation cases are referred to the Special Workers' Compensation Panel for hearing. It is mandatory for the Appeals Panel to hear the case. After the decision of the Panel has been sent to the parties, either or both of the parties can request the Supreme Court for a Full Court Review of the case. This review is discretionary with the Supreme Court. If the Supreme Court grants a Full Court Review, the case is argued before the entire Supreme Court and an opinion is issued. If a motion for a Full Court Review is not filed, the Supreme Court formally adopts the Panel's opinion. Decisions of both the Appeals Panel and the Supreme Court are published on the Supreme Court's website (www.tncourts.gov).

Table 51 contains information regarding workers' compensation appeals that was provided by the Administrative Office of the Courts. Table 52 compares the number of trials reported on the Statistical Data Form with the number of appeals reported by the AOC. This is not a direct one to one comparison, but is provided to give a relative amount of appeal court utilization. The number of appeals to the number of trials decreased from 12% in 2001 to 11% in 2005 then increased back to 12% in 2006. For 2007, for 2008 there were actually more appeals than there were trials. This is possible because the percentage reflects that some of the cases from previous years were heard on appeal in subsequent calendar years. In 2010, the percent of appeals to the number of trials is 11.5%.

Table 1: Workers' Compensation Appeals

Year	Workers' Compensation Appeals	Number of Motions for Full Court Review Docketed	Number of Motions for Full Court Review GATD	Number of Motions for Full Court Review Docketed
2000	100	0	10	0
2001	100	0	10	50
2002	100	55	0	51
2003	150	55	1	0
2004	155	52	2	0
2005	00	20	0	20
2006	100	00	2	0
2007	111	00	0	01
2008	120	00	0	25
2009	111	02	2	05
2010	00	22	0	10

Table 2: Comparison of Number of Trials to Number of Appeals Filed

Year	Number of Trials Reported on D1 Forms	Number of Appeals Filed with Supreme Court	Percent of Trial Verdicts Appealed
2001	200	100	02.1%
2002	200	100	00.0%
2003	000	120	00.0%
2004	000	105	00.2%
2005	205	00	00.0%
2006	201	100	50.0%
2007	155	111	01.0%
2008	00	120	100.1%
2009	05	111	100.5%
2010	105	00	00.5%

Not based on actual case to case numbers, but the number of appeals compared to the number of trials in a particular year

Conclusion

This report provides a yearly data snapshot of the Tennessee workers' compensation system for cases involving permanent disability. Its intent is to give a firsthand impression of the reforms that have been passed and to aid stakeholders in future decision making. Highlights from calendar year 2010 data are listed below. Appendix A provides ten year trend graphs of the means and medians of the information presented throughout the previous pages.

- The utilization of the Tennessee Department of Labor and Workforce Development to conclude cases has leveled off. The percent of cases concluded in this manner is between 5% and 12% of cases between 2005 and 2010.
- Trials are occurring in 1.1% of Tennessee workers compensation permanent disability cases in 2010.
- The average time from injury to conclusion for 2010 takes over 1 year 10 months (111 weeks).
- Settlements when a complaint has been filed took on average 115 weeks to conclude once MMI was reached. This is more than twice the time from 2001 and 10 to 20 weeks more than other years.
- The percent of Department approved settlements where a complaint has not been filed has increased from 1% in 2005 to 10% in 2001 and 2010.
- The average age of injured workers continues to increase. The average age of injured workers from 2001 SD1 data is 45.
- The level of education of injured workers continues to be increasing.
- Mean weekly compensation rates had increased steadily from \$11.10 for 2000 cases to \$20.21 for 2001 cases. For 2010, the statewide mean is \$20.00, marking the first time since SD1 data was collected that average weekly compensation rates have decreased.
- The mean duration of temporary total benefits being paid has increased from 1.1 to 2.2 in ten years.

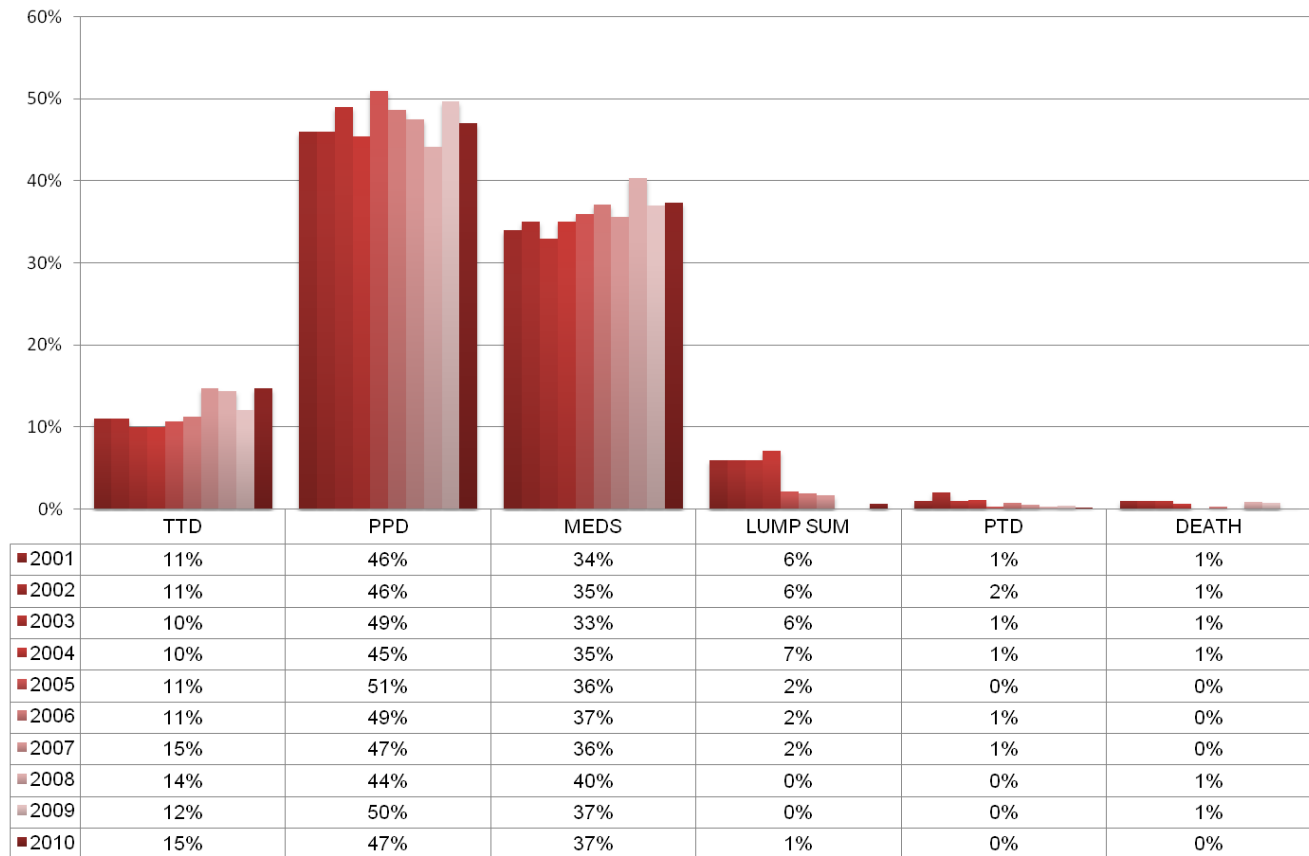
- The yearly increases in medical benefits expenses per year have leveled off. For 2001 through 2010 cases, average medical benefits paid have ranged between \$1,005 and \$21,000. The statewide mean for medical benefits paid in 2010 is \$21,000.00, the highest mean since the reforms were enacted.
- Eighty percent of cases reported the use of only one PPI rating in 2010.
- Average PPD benefits for body as a whole return to work cases have decreased by more than 20 weeks since the implementation of the 2001 reforms. The decrease amounts to over \$11,000 less in PPD benefits per body as a whole return to work case.¹
- For arm injury cases where the injured worker returned to work, average PPD percentage amounts are down from 10.0 to 4.4. This is equivalent to a decrease nearly 10 weeks or \$4,000 of benefits per case.
- Average PPD percentage amounts for return to work leg injury cases decreased by nearly 10 weeks from 21.2 (22.0 weeks) in 2001 to 11.4 (23.0 weeks) in 2010. The decrease amounts to \$4,000 less in PPD benefits per leg injury case.

The numbers reported previously have been based on average amounts. It is also important to consider what is happening with permanent disability cases in Tennessee as a whole. Figure 5 indicates the percent of all medical and indemnity dollars² reported on SD-1 forms for calendar years 2001 to 2010. The medical data reported is the amount paid as of the date the case is closed with the state agency and does not reflect any additional medical payments over the course of the employee's lifetime. These data do not include monetary amounts paid in medical only claims.

¹ The amount is based on 20 weeks of benefits multiplied by the average weekly compensation rate (\$500.00).

² Figure 10 presents percentages based on the dollar amounts listed on all SD-1 forms, which when totaled, range between \$10 million and \$500 million per year.

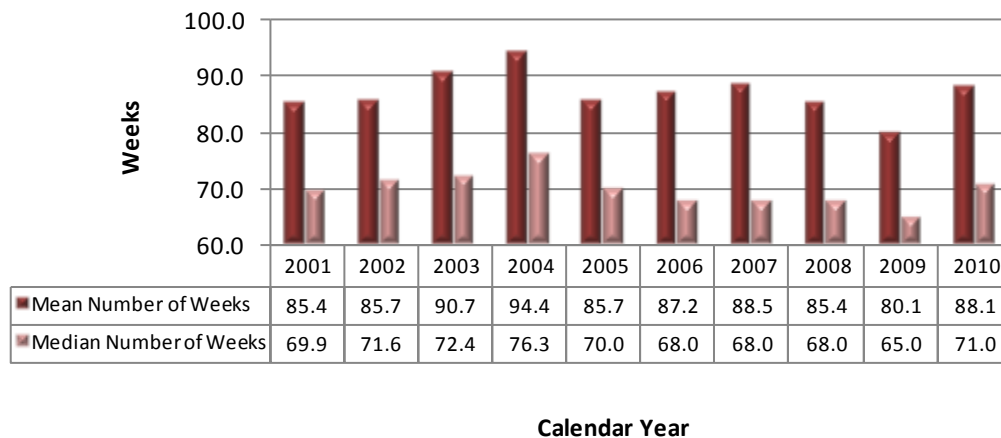
Figure 1: Percent of Workers' Compensation Dollars Paid for Tennessee Permanent Disability Claims



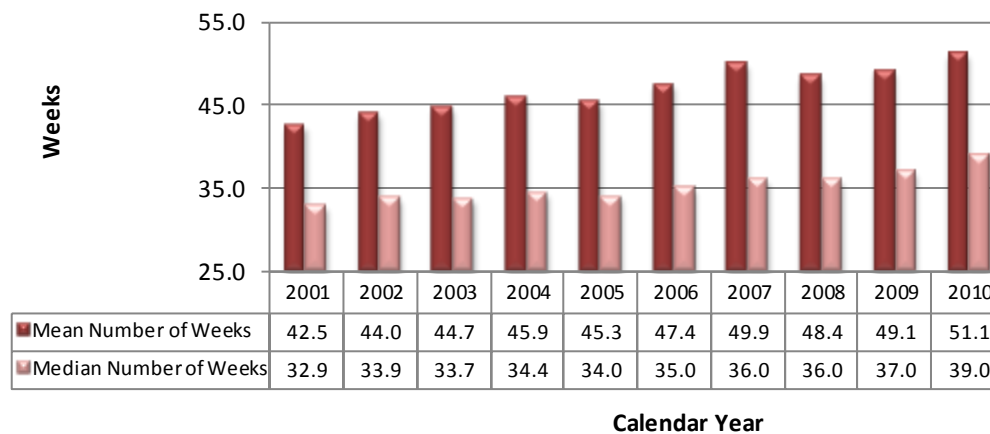
Appendix A

Ten Year Trend Graphs for Tennessee Workers' Compensation Cases Concluded in Calendar Years 2001 – 2010

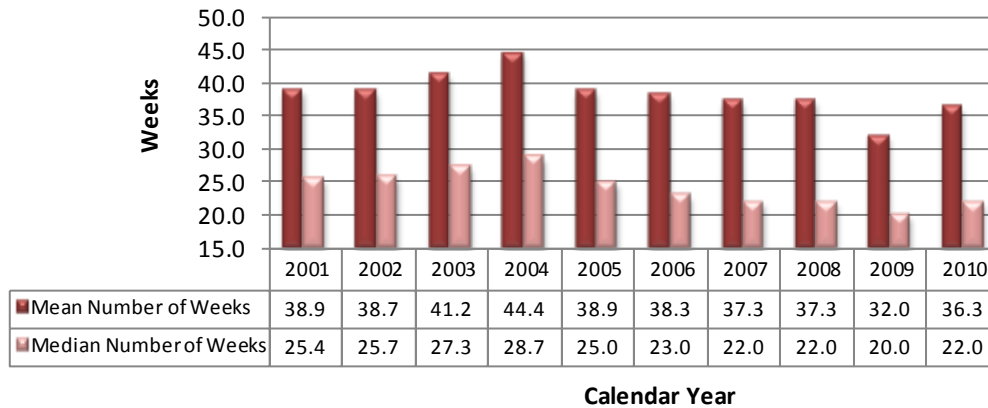
Number of Weeks from Injury to Conclusion



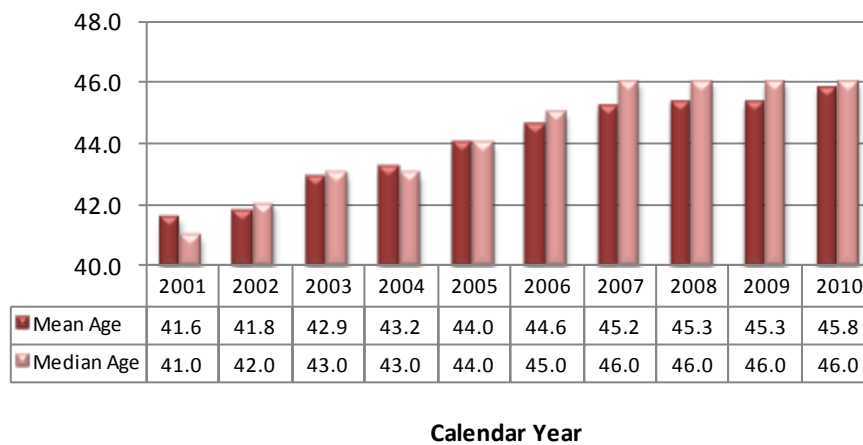
Number of Weeks From Injury to MMI



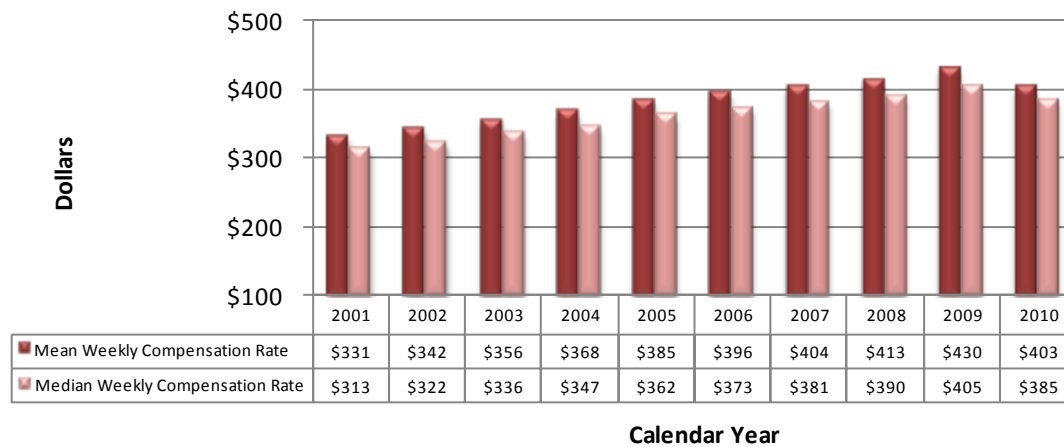
Number of Weeks from MMI to Conclusion



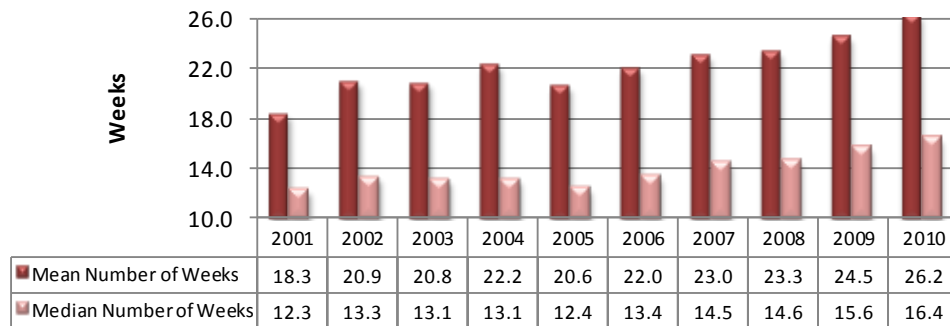
Average Age at Date of Injury



Average Weekly Compensation Rate

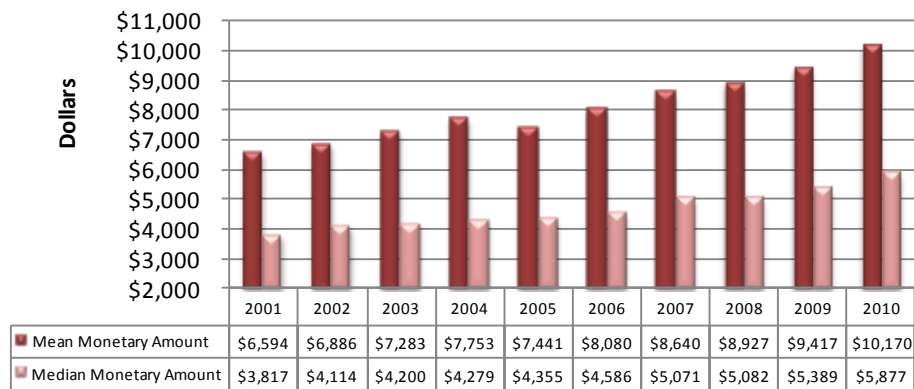


Average Number of Weeks of TTD Benefits



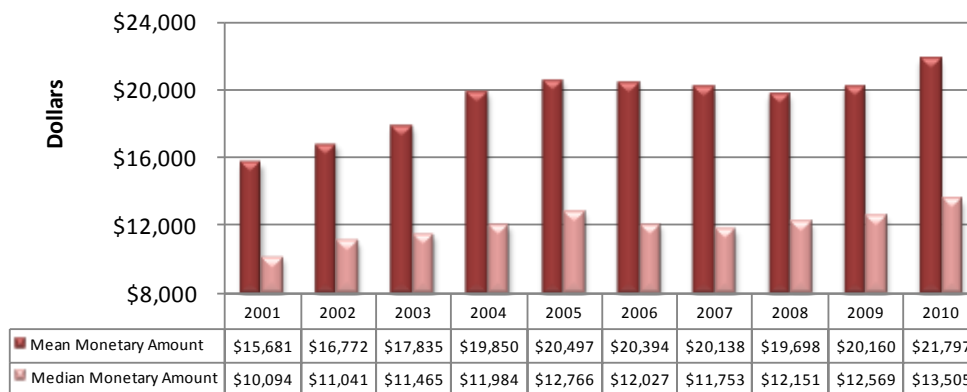
Calendar Year

Average Monetary Amount of TTD Benefits



Calendar Year

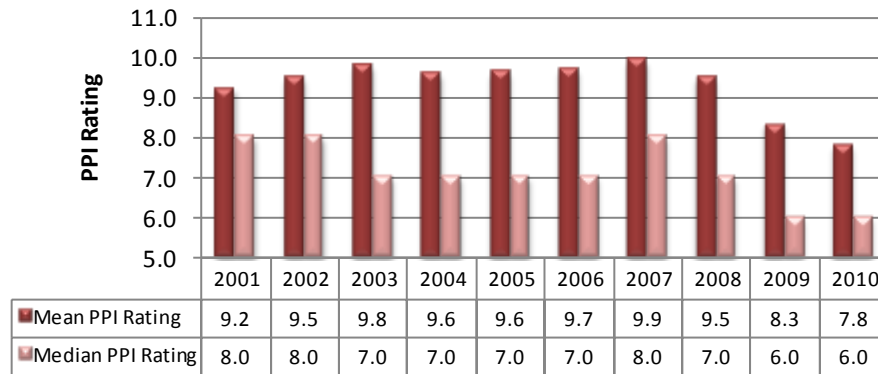
Average Monetary Amount of Medical Benefits/Expenses



Calendar Year

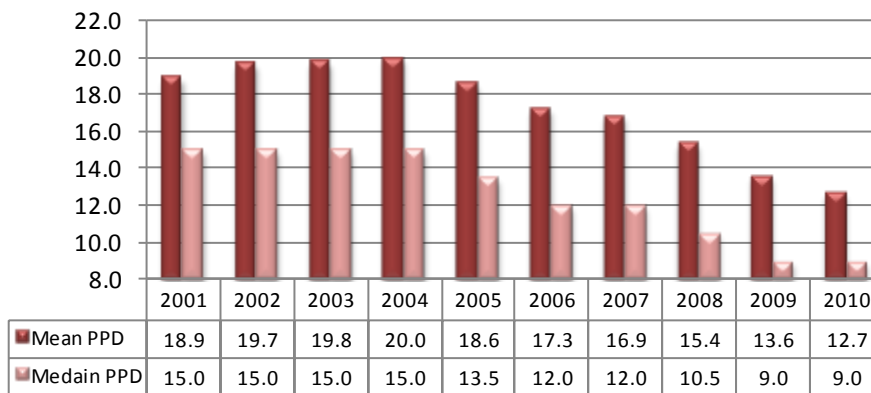
Body as a Whole Cases Where the Injured Worker Returned to Work

Average PPI Rating



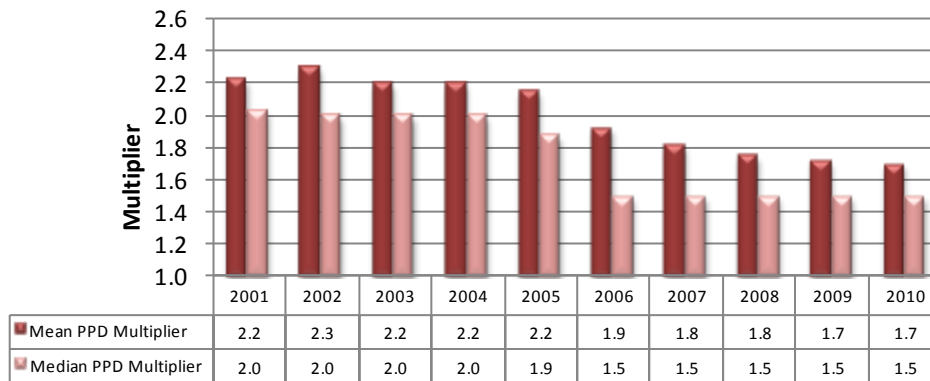
Calendar Year

Average PPD Percentage Awarded



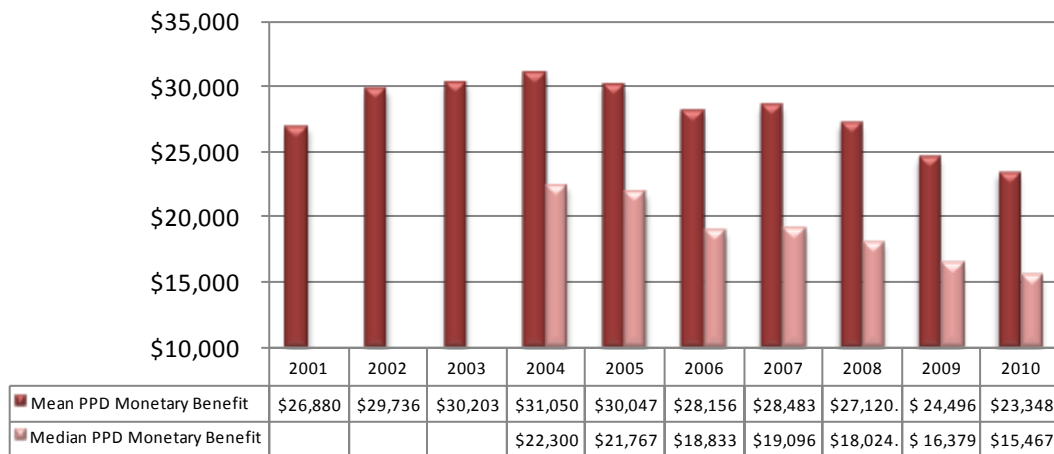
Calendar Year

Average PPD Multiplier



Calendar Year

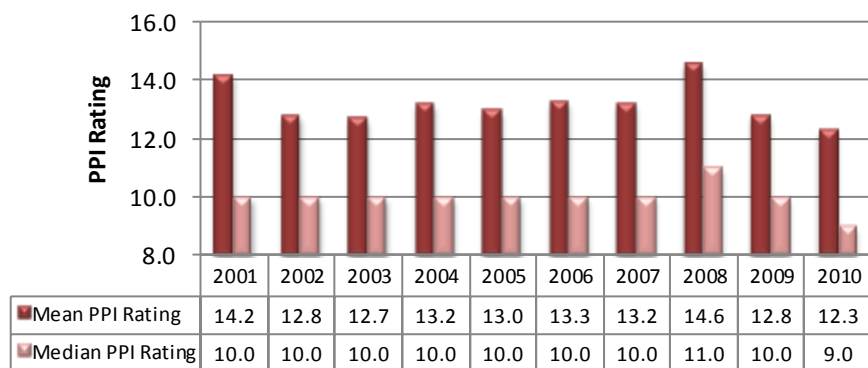
Average PPD Monetary Benefit



Calendar Year

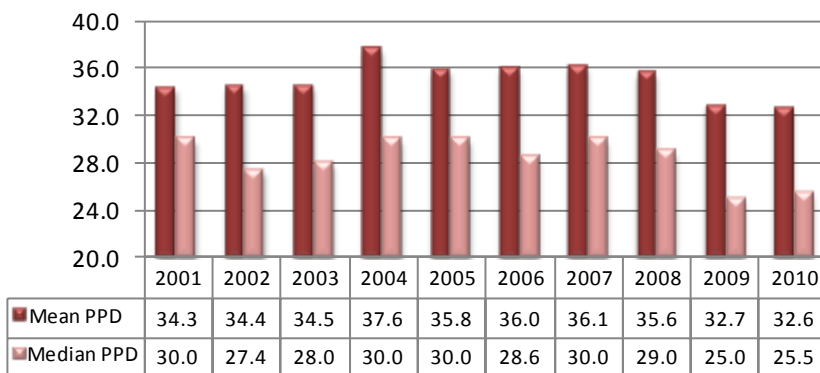
Body as a Whole Cases Where the Injured Worker Did Not Return to Work

Average PPI Rating



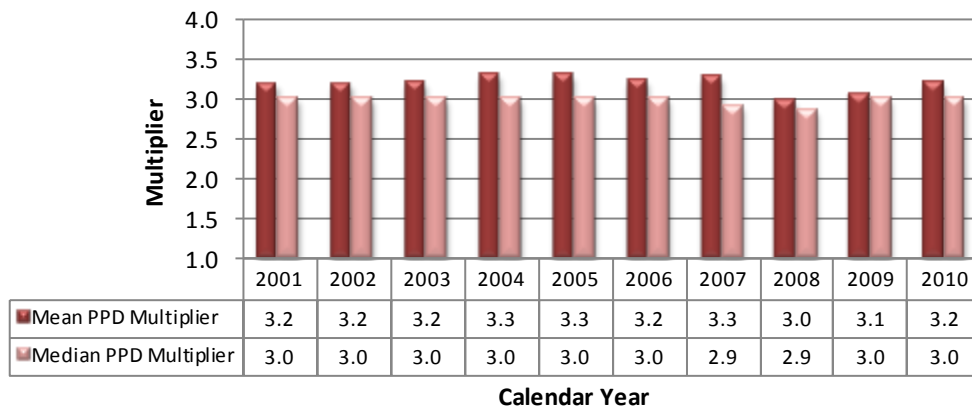
Calendar Year

Average PPD Percentage Awarded

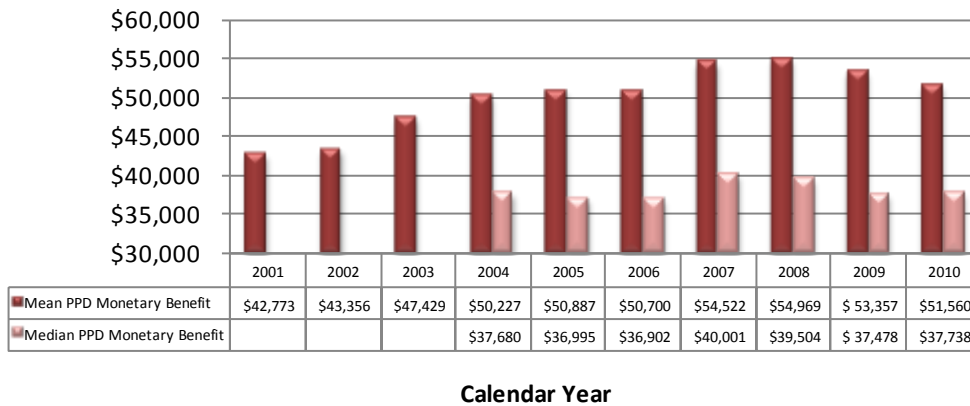


Calendar Year

Average PPD Multiplier

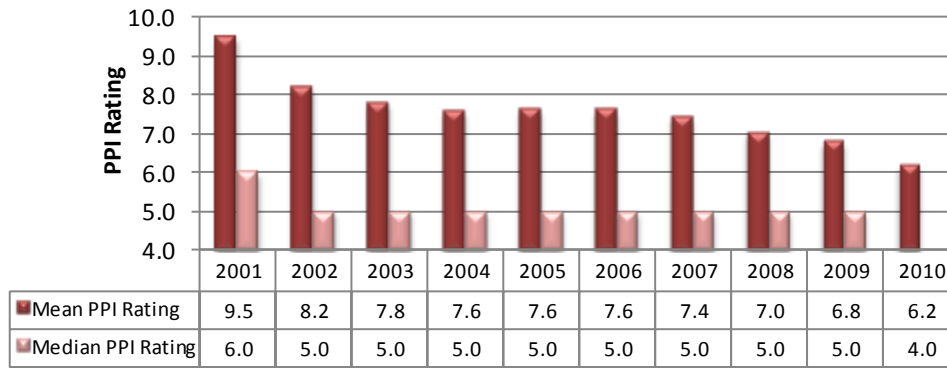


Average PPD Monetary Benefit



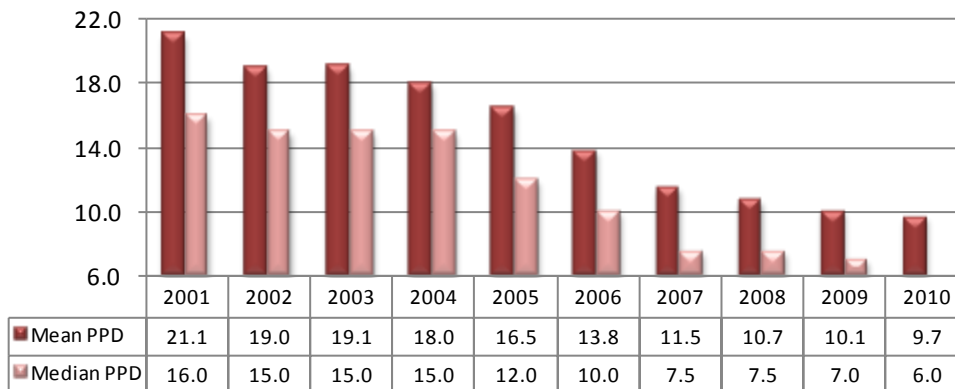
Arm Injury Cases Where the Injured Worker Returned to Work

Average PPI Rating



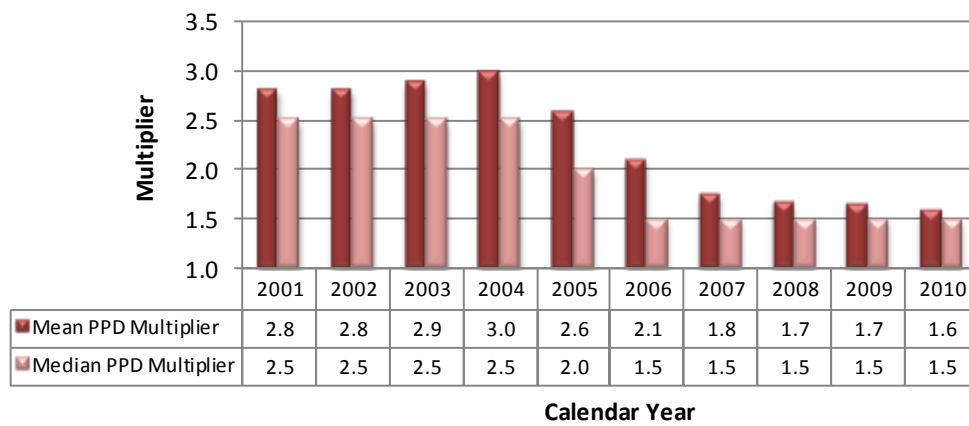
Calendar Year

Average PPD Percentage Award

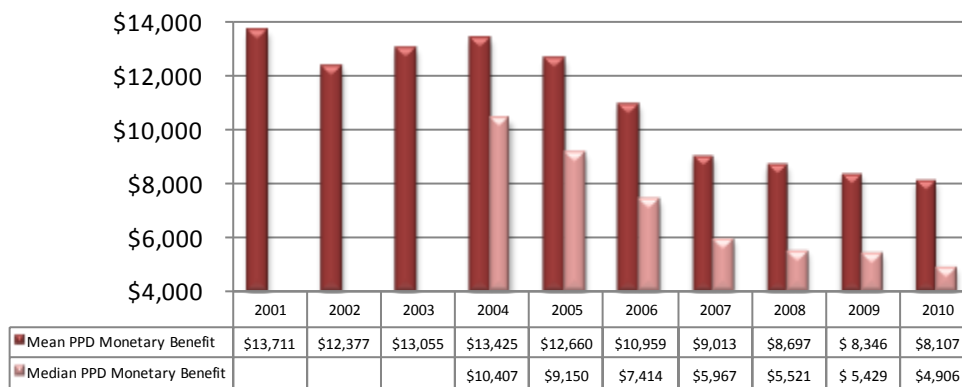


Calendar Year

Average PPD Multiplier

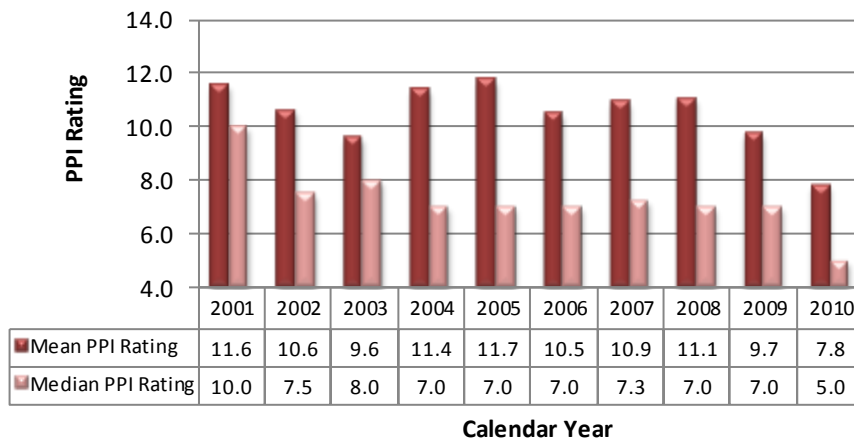


Average PPD Monetary Benefit

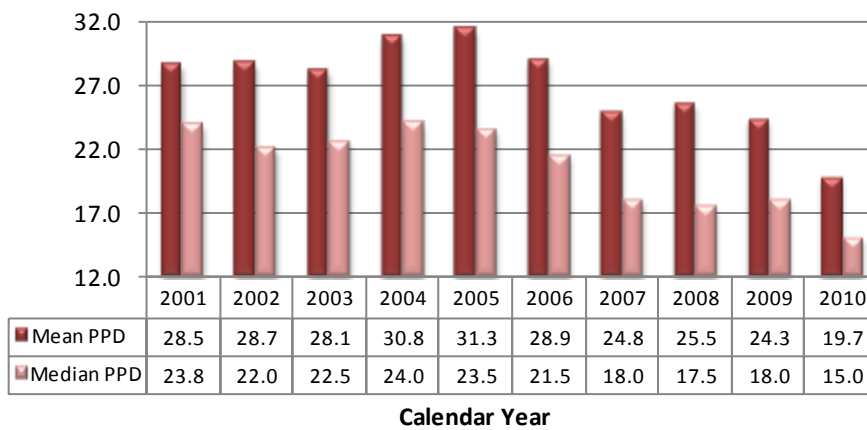


Arm Injury Cases Where the Injured Worker Did Not Return to Work

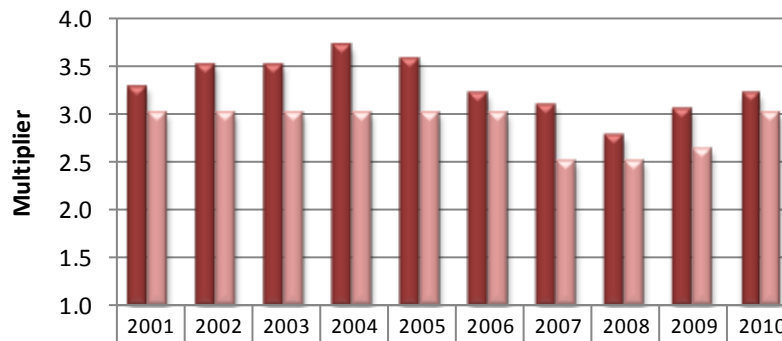
Average PPI Rating



Average PPD Percentage Awarded



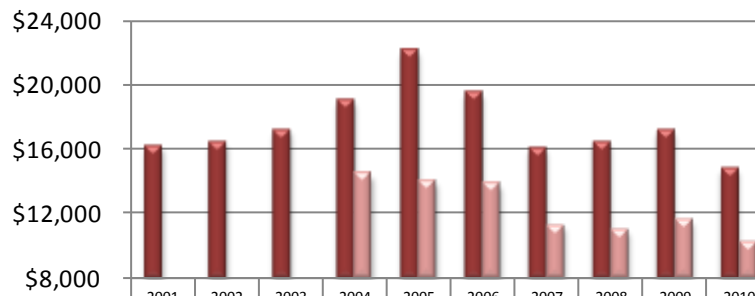
Average Arm PPD Multiplier



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Mean PPD Multiplier	3.3	3.5	3.5	3.7	3.6	3.2	3.1	2.8	3.0	3.2
Median PPD Multiplier	3.0	3.0	3.0	3.0	3.0	3.0	2.5	2.5	2.6	3.0

Calendar Year

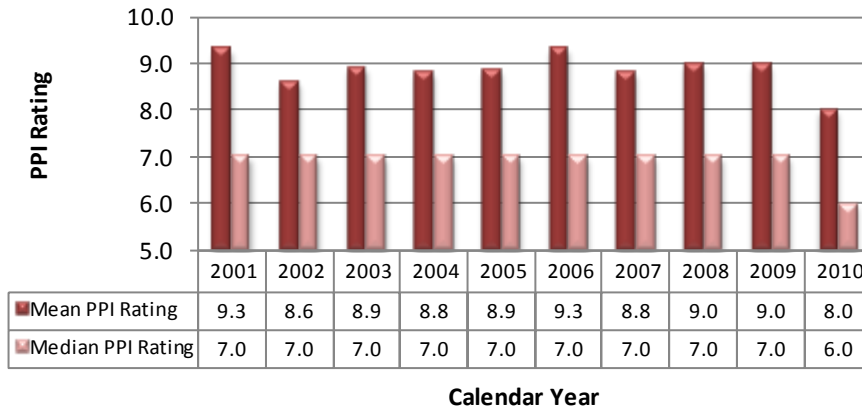
Average PPD Monetary Benefit



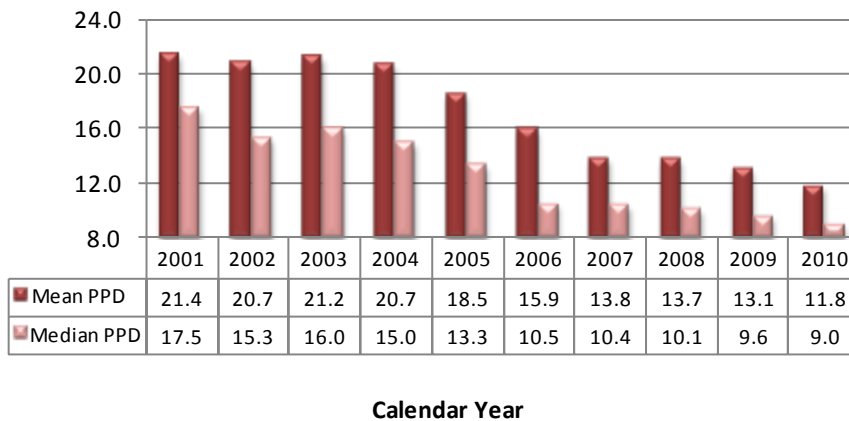
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Mean PPD Monetary Benefit	\$16,14	\$16,37	\$17,19	\$19,05	\$22,15	\$19,48	\$16,07	\$16,435	\$17,14	\$14,77
Median PPD Monetary Benefit				\$14,38	\$13,99	\$13,79	\$11,21	\$10,958	\$11,55	\$10,23

Percentage of Injury Cases Where the Injured Worker Returned to Work

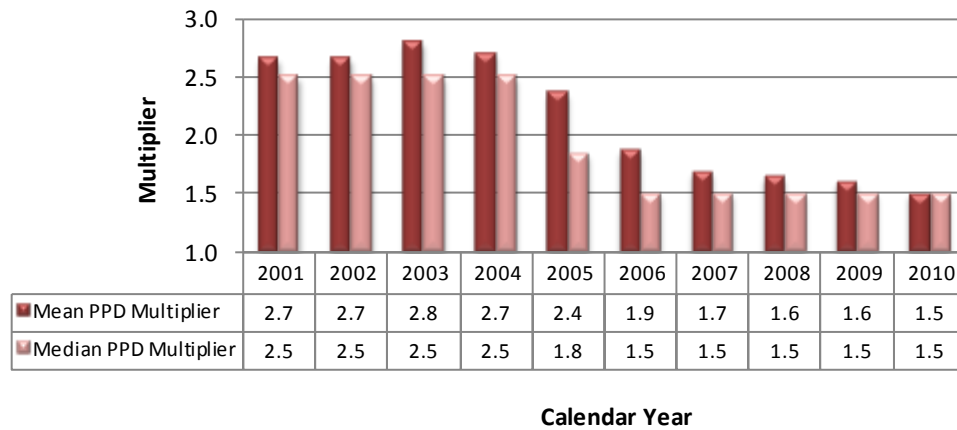
Average PPI Rating



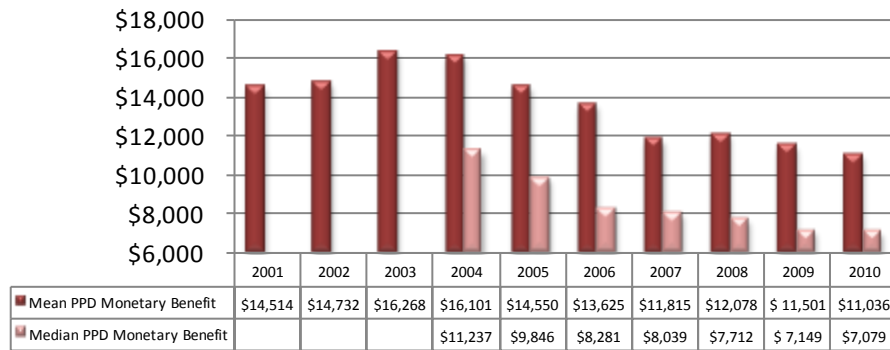
Average PPD Percentage Awarded



Average PPD Multiplier

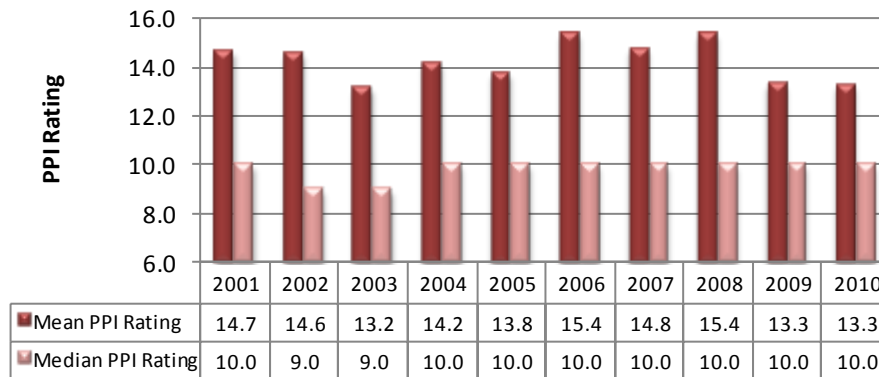


Average Leg PPD Monetary Benefit



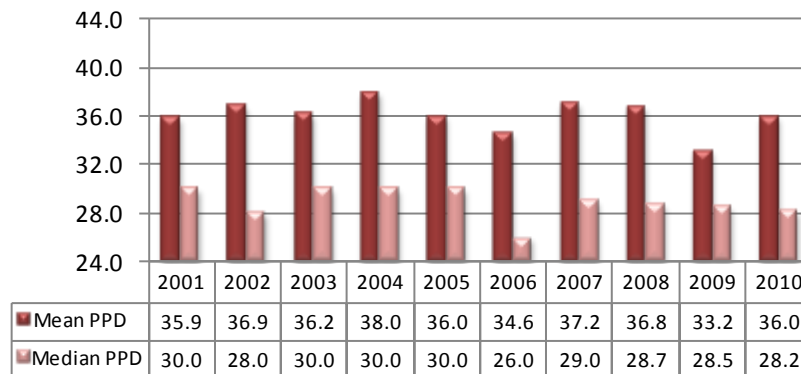
Personal Injury Cases Where the Injured Worker Did Not Return to Work

Average PPI Rating



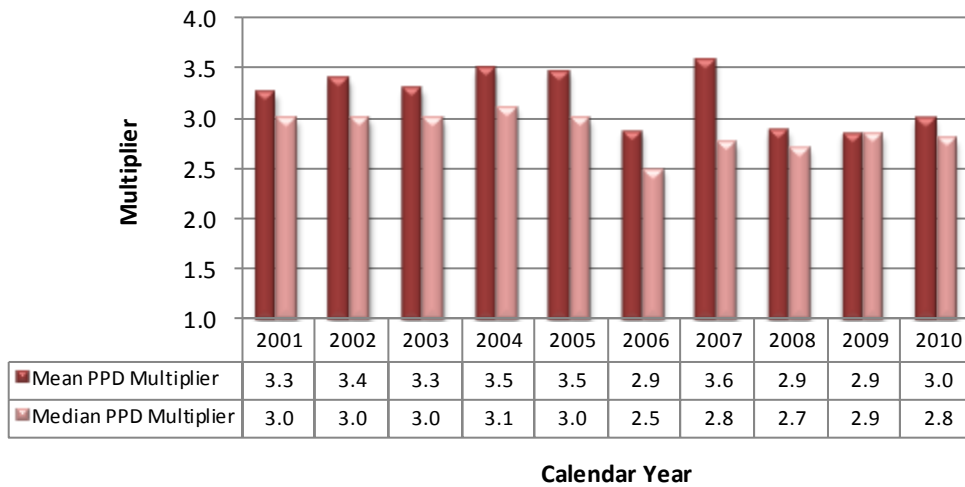
Calendar Year

Average PPD Percentage Awarded

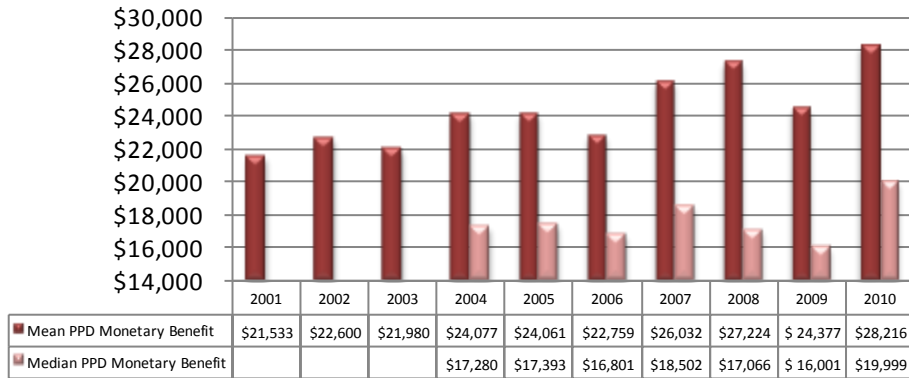


Calendar Year

Average PPD Multiplier



Average PPD Monetary Benefit



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September 26, 2011

The Honorable Karla Davis, Commissioner
Department of Labor & Workforce Development
State of Tennessee
220 French Landing Dr.
Nashville, TN 37228

Re: Comments on the Proposed Amendments to the Rules regarding the Medical Fee Schedule

Dear Commissioner Davis:

On August 22, 2011 the Advisory Council on Workers' Compensation heard from the Tennessee Department of Labor and Workforce Development as well as members of the public, an explanation of and comments regarding the Department's proposed amendments to the Rules concerning the Medical Fee Schedule. Department of Labor Attorney Landon Lackey gave a presentation on both the emergency and permanent proposed amendments and copies of all proposed amendments to the rules were distributed to members of the Advisory Council for review. Dr. David McCord and Mr. Nathan Green voiced their comments to the Council.

On September 20, 2011, the Advisory Council met and considered the proposed amendments as required by *Tennessee Code Annotated* § 50-6-121(f)(1). Attorney Lackey again provided explanation to specific inquiry from Council members regarding the proposed amendments to the rules. The Advisory Council members additionally received public comments from Ms. Becky Farmer and Dr. Merrill White. Council members David Davenport and Dr. Keith Graves also provided formal positions from their respective fields of practice.

Numerous questions were asked and discussion ensued, resulting in the consensus that, while the Advisory Council would not take a uniform formal position on the proposed rules, they would provide comment to you of all that was expressed and discussed during their meetings for your consideration prior to the TDLWFD public hearing scheduled for September 28, 2011.

As such, herein and attached, are the comments made and materials presented by and to the Advisory Council on Workers' Compensation for inclusion in the record of the Department of Labor and Workforce Development with respect to the TDLWFD Rulemaking Hearing set for September 28, 2011.

In chronological order of their presentation:

J. Nathan Green with RobinsonGreen representing orthopedic doctors and physicians spoke:

You've heard the technical explanation and I'd like to add the human factor. We have a physician here on the front row. This medical fee schedule change will have a significant impact on physicians who participate in WC, as Landon said, and we are going to communicate with every department head and every agency that will be considering this matter to let them know of our concerns. WC is an important program and a lot of our physicians gladly and honorably participate in such a program, but ultimately we're going to continue to discount and push back the important role that physicians across the state play in WC by cutting fees and creating additional administrative nightmares to the point that the standard of care in this state is going to be impacted. And it might not be tomorrow and it might not be next week, but ultimately it will be.

I will pledge to you and urge you, let's look at this not just from these spreadsheets and the numbers on that and how it all translates to those injured workers' who we're trying to get back in the workplace and to that physician who is primarily responsible in making sure that worker gets back to work and is a productive citizen. Let's not forget about the physician. I urge you not to do that and I urge the Department to do that and as we go along in the next month we're going to continue shouting that as much as we possibly can. We consider this to be a significant set-back for physicians across the state and we look forward to working with anybody to see if there's a way we can ease this blow, but this will have greater impact than we might be able to see or translate onto a spreadsheet at this particular time and I urge you to keep that in consideration and we'll see you next month.

Dr. David McCord, an orthopedic surgeon who practices Orthopedics in Nashville, Tennessee at the Tennessee Spine Center spoke:

Thank you very much. This is sort of new for me and there's a lot of information and apparently a pretty complicated deal and I think we are all here to try to take care of injured workers. That's what this is all about and it sounds like there are some financial issues that have to be dealt with and I understand that too. I have to say there is just an awful lot of stuff on these graphs that I scratch my head with – what I'm taking away from today is that it is a cyclical business, there's probably a little bit of self-inflicted issues with it, but, at the same time, at the end, we do have to grapple with how to cover these workers and keep the access to care. Now, I'm a surgeon, that's what I've done for the last 20 years. I'm generally speaking, pretty a-political. My job has always been just to take care of people and that's it and leave everything else to you folks, but the world is changing, and that's why I came down. I can tell you this, as a surgeon, I see people and they need a procedure and they fall into two categories. One of those categories is emergent and when it's emergent that means we have to go right now. You pull the trigger and the circumstances and the solution are rarely as good as they can be if you take a little bit more time, do a little bit more planning, get the best team going, get everybody together and talk. That's how you really solve this sort of thing, so my whole gist in this is that I'm scratching my head after what I've heard on these slides as to this emergency part of it. I don't get it. September 28th and then we'll have a meeting the next day, and that's it? I would just suggest to you that it's important to all of us. We want to get it right and I think you'll find the physicians, myself included, I'll listen and be part of the solution too. Thank you very much.

Ms. Becky Farmer, Practice manager of the Center for Sports Medicine & Orthopaedics in Chattanooga, TN.

We have 18 Orthopedists with over 200 employees and significant workers' compensation business. Our customers include Coca-Cola, Covenant Transport, Unum, Blue Cross Blue Shield of TN, Mickey Bakery and Lazy Boy. We also have a walk in clinic where injured workers can come in and be seen at the time of their injury and be seen the same day. We realize something needs to be done and we want to do our part. However, it's not just about the fee schedule, but also about the labor costs and the resources it takes to see a workers' comp patient. Small sample size with examples of what it takes for them to get through the system. From a stack of charts on just one desk where no approval had yet occurred or where care had been denied to see the difference between the time delay and cost of following medical treatment recommended by the physician. (attachment) The hoops that we have to go through, the number of denials, layers of cost. There are multiple phone calls for WC patients versus a 2 minute online process for commercial carrier patients. Consider allowing a collaborative approach to not only looking at the fee schedule, but looking at how the patients are managed. How the care is or is not provided and look at a comprehensive approach to what needs to happen in the State of Tennessee.

In response to query from Council member Dr. Samuel Murrell, Ms. Farmer indicated that she could eliminate one scheduler and 4-5 clinic staff and it would free up a significant amount of the physician's time if their office didn't have to deal with all the WC paperwork, hoops, calls, denials, issues.

Dr. Merrill White, President of the Tennessee Orthopedic Society and member of the Neuro-Spine Committee 200+ orthopedic and neurosurgical spine surgeons in the State of Tennessee.

As President of the Tennessee orthopedic clinics of Knoxville Tennessee, represents 22 orthopedic surgeons in and around the Knoxville area. President elect of the Tennessee orthopedic Society 600 + orthopedic surgeons across the state of TN.

There is no general consensus among all those people about what should be done, but, having said that, WC system is generally viewed as inefficient and cumbersome. With extraordinary effort when compared to commercial insurances, it can be made to work. Most of us continue to tolerate it and the current reimbursement is barely adequate. Proposed reduction of 11% to those surgeons caring for WC patients. Speaking for the 22 orthopedic surgeons in my group in Knoxville, I can tell you with certainty that if that goes through 100% will drop out of the WC system. Speaking for Orthopedic surgeons across the state, my thought is that between 50-75% will drop out if those reductions go through as they are currently written. The lack of care that would result will result in long delays in access to care. It will result in prolonged return to work. It will result in higher PPI ratings and greater limitations to those people that ultimately return to work. It will also result in increased costs to the employers of the State of Tennessee and it will make TN a less viable environment for employers that wish to come into the state. Frankly, across that population, people have been accepting of a reduction in terms of 5%, but even at that number there's going to be a drop out of physicians from the WC System and whether the WC system remains viable from that point remains an open question.

Secondly, the administration burden placed on physicians and their offices in the current system are excessive and a significant source of dissatisfaction for the physician, their patients, and certainly the office staff. The burden takes many forms and is not limited to excessive demands for peer reviews at all steps along the way of patient care, to include recommendations for PT, imaging and certainly for surgical treatment. The comments I have encountered are voiced like this "if you don't trust me to take care of your patients, then don't send them to me. I'd rather not see them than be beat up at every step along the way as I'm trying to take care of them." Everyone doesn't feel that way, but I've heard that on more than one occasion. It's also important to recognize that when I see a WC patient at my office, it's not just the patient that I am concerned with – it's at least 3 entities that are involved in that conversation. There is the patient, the employer and the insurance

company. The insurance company may be represented in that office by a nurse case manager, it is more commonly represented by an adjuster who is offsite and not readily available. In fact there may be a fourth participant in that conversation, the attorney that's involved. So, the amount of time caring for the WC patient is probably double that of a patient with private insurance.

Another burden in caring for WC patients is the delay in approving care. It is not uncommon that we see patients back in our office and we've made recommendations for care or therapy or imaging and the plan is to move forward based on the results of that recommendation. When they return to the office, that recommendation has not been carried out, so you start back and it's a further delay in care.

In short, I think the physicians in TN are willing to do their part. We would like to see a collaborative effort between physicians and WC administrators to streamline the current system and make it less costly to administrate as well as improving the patient, physician, employer satisfaction with the system. We do not feel that physicians should bear the burden of reconciling the state budget by themselves. We do feel like in this conversation, other interested parties include hospitals insurance companies and others would be involved in this conversation. If there is a burden to be borne, it should be shared by all rather than borne by the physicians. The solution cannot be to steal our services through unilateral action.

Mr. Bob Pitts, Advisory Council Member:

I want to get it on the record as to what the difference between the emergency rule and the permanent rule – and that nothing affects physicians. The permanent rule does include some things that are not in the emergency rule – what are they?

Mr. Landon Lackey, DLWFD Attorney:

The Permanent rule includes the emergency rule as it is. Plus we are updating the drug free workplace panel to match that used by the DOT. Allow chiropractors to bill office visit along with a manipulation so as not to delay care on initial visit. Repackage drugs – NDC # - no average wholesale price, so it becomes a price that is made up – help from pharmacy people. Ambulance 150% of Medicare reimbursement. Can't regulate the air ambulance as it is preempted by federal law. Clarifying billing procedures – not affecting anybody's fees, putting some of fee schedule which has proven tricky, into the actual language.

Mr. Pitts: What about the sections dealing with institutional care.

Mr. Lackey: There are no substantive changes to hospital fee schedules. There is a clarification as to when an in-patient visit begins from an out-patient, because of different billing.

Mr. David Davenport, Tennessee Physical Therapy Associates and member of the Advisory Council introduced a letter (attached) regarding the impact of the proposed rule changes on physical therapy providers.

Of primary concern is the combined effect of the fee schedule which has some incorrect methodology with the application of the multiple procedure price reduction in the way that's applied to physical therapy, where the practice expense component of the RVU has already been discounted, but then with the NPPR, it's proposed to be discounted further. Another comment made on the DLWFD website is that TN has a maximum allowable fee. That is what is being used to determine the effects on the insurance company, but what is actually being reimbursed is much less than that (20-50% lower than that maximum allowable fee) – so the numbers being used aren't accurate. 25 states medical price tracking – TN providers have a lower price today for medical treatment than it was in 2002. During that time, the frequency was increased in 2009, and also some severity increase which would account for the overall increase in medical cost while not representing an

unfair overpayment of medical providers. So we as providers are overall, being paid less for our services than we were in 2002.

That report also went on to compare TN to the median study states within that group and found, on average, that fee schedule states within that group experienced a (2002-2010) increase of 10% whereas TN actually decreased. Those of us in the health care industry are suffering the same budget constraints and economic times as the rest of the employers and as we look at further decreases as we are being asked to increase the volume of care we are providing, it produces a difficulty we have with continuing with the administrative burden of providing that care at an ever declining price.

To end with an analogy, we took a contract with a manufacturer in the area just under 2 years ago. We came in with a bid that was higher than the provider that we displaced by about 20%. In that 2 year period while we were providing a higher quality of care, we saw their WC costs decrease from about \$4.5 Million per fiscal year to about \$2.5 million. We also saw their amount of loss time decrease and their number of light duty days decrease by about 50%. Now that's not entirely attributed to what we were doing in the PT clinics, but there will come a point in the declining prices that quality providers that can show that kind of cost reduction will opt out and will go to other business that we can continue to provide with the 2 minute administrative burden vs. the 20 minute.

Mr. Lackey: Specifically, about that WCRI study: It does show that TN is lower than 2002, but we're getting close to that 2002 level. Our fee schedule didn't become effective until 2005, so just the fact that we're getting close to those 2002 levels is troubling to us. Another thing is that study uses data up to June 2010 and we saw a big spike when Medicare dropped their conversion factor at the beginning of this year and ours was still frozen at the 08 levels. So I would suspect that if we saw a report about this time next year that took into account 2011 prices, you'd see a little bit fuller picture of where we are right now.

Mr. Davenport: Sharp decline when 2004 reform was put into place. One of medical providers' biggest problems is not knowing what we're dealing with because we're not dealing with a state fee schedule. We're dealing with a fee schedule and multiple bill review and multiple PPO's that change. We can file with Liberty Mutual today and have one bill review and we can file with Liberty Mutual a month from now and have a totally different fee schedule and bill review. It makes it difficult for us to know how to plan our business and how to go about positioning ourselves to provide that care and going into new markets. Letter submitted made part of the record.

Mr. Pitts: My sense is that it's probably going to be unproductive for this group to take a vote on this issue. My sense is that there may be some desire to make some comments and those comments get forwarded to the commissioner for whatever they deem appropriate in their consideration of the final rule. For all the parties in the room, when I make the comment that no one wants to be here with this issue today, you've got to put it in context, we're pitted brother against brother here, what I mean is that Doctors are here, they had a fee increase and they feel it is being taken away from them. There's another piece of that argument that says yes there was an increase, but it was never costed by NCCI and NCCI wasn't made aware of it and all of a sudden it dawns on somebody, here's a significant impact, so everyone needs to take that into consideration. Some of you will not agree with me and this is speaking only for me. One of my concerns about the fact that that "happened" and it has created a crisis across the state is that the fact still remains that in the high end specialties, our WC reimbursement system is reimbursing you among the highest in this region and I think you ought to bear that in mind as you think through what your reaction to this is. I guess what I'm saying is this group sitting here does not want to vote on an issue that was discovered and has now proceeded between the implementation of an

emergency rule and what, in fact, would be a permanent rule. I think all of us need to know the context in which it got here.

Perhaps among the comments I would like to pass on to the commissioner, I've heard a lot of conversation about how we need to reevaluate the reimbursement system in this state regarding to medical providers. I would encourage that the first place that start is within the department and I would encourage them to look at our surrounding and southeastern states and see how we stack up with the understanding that in most instances that is going to be some derivative of a Medicare cost driven system because that is was most of them do.

The second suggestion I would make is since there seems to be a great deal of frustration regarding additional paperwork and administrative burden in connection with WC. As a part of that search of the other states, one of the things I think it would be helpful to find out, has anybody got a magic wand? Has anybody got an approach that is less burdensome and less intrusive than what we're doing in TN.? If it is, we ought to think about it, we ought to consider it. And finally, with respect to the former, while they're doing the search, it would be interesting to know how many of our sister states have any kind of Medicare floor or any protection built into their reimbursement system that impacts in the event that at the federal level various actions are taken, that is further reductions in Medicare reimbursement. I think that's essential information to be collected, would encourage the department to do it, because I feel very confident that that isn't the last of this conversation and that is going to be important information to have in future discussions.

Finally, on the permanent Rule, I have heard some rumors, I don't think the department concurs, have asked for some validation and that has not occurred yet, that there might be a circumstance under this proposed rule that could also have significant cost impact on the medical system in the state (non-physician). So my encouragement to the Commissioner, my final point would be, that they be real sure that we have NCCI cost this final rule to be sure that we're not missing anything, because if we ever get through this crisis that's before us, I would hate to, in 4-5 months find out that we have another one. So, Mr. Chairman, those are my comments that I would like to pass on to the Commissioner.

Chairman David Lillard: O.k., Mr. Pitts' comments will be made part of the record.

Ms. Abbie Hudgens, Administrator of Dept. of Labor and Workforce Development and Commissioner Davis' designee as an Advisory Council Member:

We appreciate the comments we've heard today, they have been very instructive. We have begun to look at some of the issues that Mr. Pitts suggested and we intend to continue that, so we are not turning a deaf ear to this, we are trying to look into this as soon as possible.

Mr. Daniel Pohlgeers Advisory Council Member:

I agree with Mr. Pitts and am pretty confident that we wouldn't have a 4-0 vote. With respect to the rest of the committee, we are all extremely passionate about making sure that our system is as efficient as possible. I think we are all equally as passionate about making sure that rules changes and legislative issues don't negatively impact any part of that system and making sure that the system continues to run as efficiently as possible. One of my concerns and I pass this concern also to the Department of Labor, is that it appears to me that, in discussions that I've had with other voting members that it may have been haste that got us into this position and it almost appears to me that haste is trying to get us out of this position in the form of an emergency rule.

I'm not sure that 90 days is all that long of a time to make sure that we get it right. And I think that there've been some very serious questions, or should be some very serious questions raised about the questions and comments of today. While I agree that it's very unfortunate that NCCI didn't have appropriate communication

between the Department of Labor for the last 3 years on the fee schedule, I will point out to everybody in the audience and the members, that the fee schedule is published and I can assure you that their insurance members knew what the fee schedule was because they're the ones that have to pay it. I think just that, in and of itself, we need to step back and decide are we going to make decisions based on the haste of a previous decision and why not make this a non-emergency rule change so that we can look at all the issues that have been brought up today and in our last meeting concerning the NCCI report and the other actuary reports, so that we're sure that what we're getting is accurate information so that we can continue to have an efficiently run, or as efficiently as possible run system.

Dr. Keith Graves, Chiropractor and Advisory Council Member:

I want to elaborate on a comment that I made at the last meeting that may have been taken out of the spirit in which it was intended and one of the doctors that spoke earlier spoke up on this and one of the things that you have to think about the train coming down the track is participation, and so I went out and pulled some research articles and if you'll just indulge me for a few paragraphs, I'd like to read to you what a couple of these studies showed.

Ultimately the major research points to several different conclusions. First and foremost, low-multiple, unmodified RBRVS fee scales do not maintain specialist participation. Every state that has adopted a low-multiple RBRVS workers' Compensation fee schedule has experienced a subsequent rapid and dramatic drop in neurologist and orthopaedist participation levels. In each of the study states, specialist participation levers were reduced by half or more within two years of the adoption of the low-multiple RBRVS fee schedule. Specialist participation levels continued to decline in Hawaii and West Virginia more than a decade after the low-multiple fee schedules were first adopted.

This trend away from unmodified RBRVS fee schedules may be driven by evidence which suggests that once specialists choose to leave the workers' compensation system they are slow to return even when reimbursement rates increase. States that have been down this path and ultimately decided to increase fees in an attempt to lure specialists back to workers' compensation demonstrate that it is far easier to maintain physician participation than to rebuild it.

And one of the comments that this study went on to say is that it is worth noting that of the three most recent major workers' compensation fee schedule changes (in Hawaii, Tennessee and Illinois), each of the states elected to adopt fee schedules with higher values for specialty providers in order to maintain and restore provider access. I've got stacks of them, but I won't take any more time. I appreciate you letting me read that.

Dr. Samuel Murrell, Orthopedic surgeon and Advisory Council Member:

I think it's pretty clear that on both sides people are a bit concerned about this rule change. I think in many ways, one of the root problems is our reliance on the Medicare fee schedule. I realize that many people think that's a simple easy fix when coming up with a fee schedule and I think in 2004, it may have been appropriate because, in a sense, our backs were up against a wall; we needed to find something because we were moving forward. We've seen this create a lot of issues. The amount of work that's required on a Medicare patient is not the same as the amount of work that's required on a workers' compensation or injured worker. The expectations of the system is not the same, the payors are not the same. The way it's funded is different. So this persistence on trying to use a fee schedule, whose goals are not parallel to our own in the workers' compensation system, may not make sense and I think we've heard the term collaborative effort thrown out. I think that would be a good starting point. I think we certainly have time to sit down and do this. I think there are people that have been trying to work things out and I would encourage the department to continue those efforts, to sit down and work with those people and find some sort of common ground that works for all parties involved and in the end, ensures that we have a workers' compensation system that works.

I have the honor of treating patients from Mississippi and Arkansas since I am from Memphis. They do have different fee schedules. Their system is drastically different. Some things about their system work, some things work horribly and I think if we were to unleash their fee schedule on our system we would find that we have a disastrous problem. And so while I know people like to look at the other adjoining states and say, “well gee they’re paying this much for this”, I think it’s kind of putting on blinders and sending us down a path that may find that we have a system that works for no one.

I certainly have the concerns about health care providers leaving the system. I think we overestimate that paying providers a premium of Medicare will keep them in the system. I think we fail to realize that Medicare represents a much larger percentage of practitioners' practice than work comp ever will or could and that if work comp went by the wayside because of the administrative, for lack of a better term, hassles and nuisance, then I think we would find that those providers would quickly fill their schedules with commercial patients and that we can’t ignore the comments from Dr. White that says frankly that his group would be willing to walk away from it and that we would find ourselves without a panel. And unlike Medicare, where patients can just walk into an emergency room and obtain treatment, and Medicare will pay a Medicare fee schedule, or someone out of network, if they’re not Medicare and that patient’s responsible, what are we going to do for injured workers? Because they can’t just walk into an ER and then expect that, although they’ll get care, that issue of payment won’t be resolved.

This written comment fulfills the statutory responsibility of the Workers’ Compensation Advisory Council concerning the Rules proposals. If you have any questions concerning this or if you require any additional information, please do not hesitate to contact me.

Very truly yours,

David H. Lillard, Jr.
State Treasurer
Chair, Advisory Council on Workers’ Compensation

Attachments:

Patient examples from Becky Farmer Practice Manager

Position Letter from The Neuro-Spine Committee

Position Letter from Tennessee Physical Therapy Association

Portion of Report of Workers’ Compensation Medical Fee Schedules

New Findings & Implication for California, submitted by Dr. Keith B. Graves

Position Letter from Medtronic Inc.